

Opening Statement by Community Law & Mediation

Tuesday, 23 April 2024

Introduction

Good morning Cathaoirleach and members. We are delighted to be here today alongside our friends in Threshold, Simon Communities of Ireland and Focus Ireland and we would like to thank the Committee for the opportunity to speak. My name is Rose Wall, and I am the CEO at Community Law & Mediation (CLM). I am joined by my colleague Mary Heavey, a solicitor specialising in housing law.

Community Law & Mediation (CLM) is an independent community law centre and charity, working since 1975 with communities impacted by disadvantage and inequality. In our work as an independent law centre, we see a huge unmet legal need for advice and representation in housing related matters.ⁱ

Part 2 of the General Scheme

We are here today to give our views on the General Scheme of the Housing (Miscellaneous Provisions) Bill 2024 (the '**General Scheme**'), in particular the proposals to introduce 'right to reside' and 'habitual residence' conditions for access to social housing supports as set out in Part 2 of the General Scheme.

As outlined in our letter to the Committee last week,¹ since late 2022 we have been working collectively with our colleagues in other legal and advocacy groups, including Free Legal Advice Centres (FLAC), Mercy Law Resource Centre and Crosscare, to emphasise the need for caution and detailed consideration of any proposals to add residence criteria for access to social housing supports and/or emergency accommodation.

We understand that Part 2 of the General Scheme is being brought forward for the purposes of replacing the Housing Circular 41/2012 (the '**Circular**'). The Circular purports to provide guidance to local authorities in '*considering whether to accept an application for social housing support from a non-Irish national*'.ⁱⁱ

Residence as an element of eligibility for social housing is not currently contemplated in the Housing (Miscellaneous Provisions) Act 2009. Furthermore, the Circular has the effect of acting as a barrier to individuals and families from disadvantaged and marginalised communities from accessing social housing supports.ⁱⁱⁱ

¹ A copy of this letter is appended below.

Therefore, we welcome in principle, the intention of the Oireachtas to bring clarity to this area of law through the introduction of primary legislation. However, we are concerned about both the manner in which the General Scheme was brought about and what the General Scheme proposes to do.

Need for more extensive consultation

From our preliminary review of the General Scheme, we are gravely concerned that the proposals could trigger a significant rise in homelessness. The General Scheme proposes to introduce major new criteria for access to social housing supports which could immediately disentitle a significant number of individuals and families from access to social housing supports. People who are already most at risk of homelessness, discrimination and disadvantage (in particular those from minority ethnic and migrant communities) would be disproportionately impacted.

In light of the significant implications of Part 2, it is troubling that that no formal or structured process of consultation on the conditions for access to social housing (and the manner in which those conditions are applied) was undertaken to inform the contents of the General Scheme.

We strongly submit that a comprehensive, structured and inclusive public and expert consultation process with all relevant stakeholders on the conditions for access to social housing supports should be undertaken, **prior** to any such proposals being advanced.

Such a consultation would provide the opportunity to address the myriad of issues caused by the current proposals, some of which my colleague, Mary, will speak to now.

Preliminary Legal and Policy Issues

On foot of our preliminary review of Part 2 of the General Scheme, we find that the proposals are unworkable, unclear and unduly harsh and restrictive, and may give rise to violations of EU law.

Our general view, which is shared by many of our colleagues in other legal and advocacy groups who are not here today, is that the proposals should not proceed in their present form.

Our initial (and non-exhaustive) concerns with the General Scheme are:

1. **Compatibility with EU law:** We are concerned that the proposals do not fully reflect EU freedom of movement of law, in that it fails to distinguish between EEA citizens exercising freedom of movement rights as workers, as against those exercising free movement rights generally. This is a potentially fatal flaw.^{iv}
2. **Importation of the Habitual Residence Condition:** We have concerns about both the legal and practical implications of the General Scheme's proposal to adopt the concept of the Habitual Residence Condition ('HRC') from section 246

Joint Committee on Housing, Local Government and Heritage of the Social Welfare Consolidation Act 2005 (the ‘SWA’). The HRC in the social welfare context is highly complex. That stated, expert decision makers are experienced in dealing with the HRC and there is a formal appeals infrastructure, through the Social Welfare Appeals Office.

The General Scheme does not provide for any equivalent appeals mechanism, so it appears that this complex determination will be made by local authority housing staff who have no expertise in this area and without any appeals infrastructure equivalent to that under the SWA.

3. **Requirement a precursor to eligibility assessment:** It is currently unclear from the way the General Scheme is drafted if the proposed criteria are to be considered as part of a social housing assessment in the ordinary way or alternatively are to be considered at some sort of precursor stage.² If the criteria are said to be a pre-cursor, we would, again, have serious concerns about the robustness and consistency of decision-making in local authorities.^v
4. **Mandatory application of eligibility criteria to all household members:** Section 20(A)(1) states that the residency and HRC criteria must be met by **all** household members in order to be eligible to be assessed for social housing supports. We believe there is considerable scope for unintended and unduly harsh consequences from a mandatory exclusion of an entire household from assessment for social housing supports in circumstances where different household members may have different residency statuses.^{vi}
5. **Impact of proposed legislation on eligibility for homeless services:** Finally, we are gravely concerned about the potential impact on eligibility for homeless services. Access to homeless services is governed by a separate legislative regime. While the General Scheme is silent on its application to homeless services, in our experience, local authorities often conflate the two systems. We are particularly concerned in light of a memo from the Department of Housing (the ‘Department’) to the National Homeless Action Committee which came to our attention last year. This memo proposed to radically overhaul homelessness law, including legislating for ‘right to reside’ and ‘habitual residence’ conditions for access to **both** social housing supports and emergency accommodation. We, along with many of our colleagues, made robust submissions to the Department on this memo but have not yet received a formal update on those proposals.

² Section 20(A)(1) as set out in the General Scheme refers to the residency and HRC criteria as applying to determine if an applicant is “eligible **to be assessed** for social housing supports” (emphasis added).

Conclusion

These issues highlight the complexity of introducing any residency condition into the social housing support framework. We urge the Committee to undertake to engage in robust and comprehensive consultation and scrutiny with all relevant stakeholders^{vii} to ensure that any appropriate legislative approach is fully informed.

We are happy to address any questions which members of the Committee may have.

Thank you for your attention.

Notes

ⁱ CLM's housing work

Last year, almost half (49%) of CLM's legal advocacy and representation work related to housing problems and homelessness, issues that were exacerbated by the acute nature of the ongoing housing and cost-of-living crisis. On average, one in ten of the individuals we meet at our legal advice clinics, are at risk of being made homeless.

ⁱⁱ Department of Housing Circular 41/2012

The Circular does not accurately reflect EU or Irish law in that it excludes several categories of persons. For example, those with a right to reside in the State under certain provisions of EU Directive 2004/38/EC, judgements of the European Court of Justice and others who, (in some cases) under Ireland's international obligations and Irish immigration law, have rights to live, work and access state supports in Ireland. In some cases, despite efforts made by all concerned to avoid it, this has led to households becoming homeless and/or spending longer periods in homeless accommodation than otherwise would have been the case. In others, it has triggered legal interventions with all the time and resource implications they entail.

ⁱⁱⁱ Impact of Circular 41/2012

See, for example: [The FLAC Casebook, A Barrier to EU Nationals accessing Social Housing Supports: The Impact of Housing Circular 41/2012 on Roma Families in Ireland \(29 June 2021\)](#)

^{iv} Compatibility with EU law

EU law provides special protection for workers, including under the Citizenship Directive and Regulation 492/2011. This is also reflected in the case law of the CJEU, such as *Garcia* C-299/14. The General Scheme as currently composed does not reflect this distinction, which may amount to a fatal flaw.

^v Requirement a precursor to eligibility assessment

More generally, any right to reside or HRC condition for access to social housing supports must be applied correctly and consistently. In our experience, significant inconsistencies in approach have emerged in local authorities as regards the application

of the Circular. (See for example: [Mercy Law Resource Centre \(2020\), Minority Groups and Housing Services: Barriers to Access, at p.8.](#))

Issues have also arisen around the application of the ‘local connection’ test and the conflation of criteria for accessing social housing supports with those for access to emergency accommodation (see for example: [The FLAC Casebook, Continued use of “local connection” tests a concern for FLAC \(20 December 2021\).](#)

Given the difficulties applicants have experienced, in particular households from marginalised and vulnerable groups who often have difficulty proving that they satisfy residence conditions, it necessarily follows that robust processes must be put in place to improve and strengthen support for first instance decision-making in local authorities. It also follows that the provision of interpreter, translation, advocacy and legal supports to the application process and applicants is essential.

^{vi} **Mandatory application of eligibility criteria to all household members**

For example, a situation could arise whereby a household is composed of two members, both lawfully resident and holding a valid stamp 4, and where one member meets the ‘5 year reckonable residence’ requirement applicable to their circumstances before the other. Is the first household member to be excluded from assessment for social housing supports until the other member also meets the 5 year criteria, effectively being subject to a potential qualifying period of reckonable residence of up to 10 years? It is our view that robust consultation with stakeholders is essential to identify any unintended, unworkable and unduly harsh effects of the proposals.

^{vii} **Relevant Stakeholders**

A comprehensive, structured and inclusive public and expert consultation process would be consistent with the Department of Housing’s obligations under section 42 of the Irish Human Rights and Equality Commission Act 2014 (the Public Sector Equality and Human Rights Duty) to have regard to human rights and equality standards in carrying out its functions (including its policy development functions).

We also recommend that the views of as the Irish Human Rights and Equality Commission on the current proposals are sought and published (noting that section 10(2)(c) of the Irish Human Rights and Equality Commission 2014 provides that one of IHREC’s functions is to “*either of its own volition or on being so requested by a Minister of the Government... examine any legislative proposal and report its views on any implications for human rights or equality*”).



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17 April 2024

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Re: Housing (Miscellaneous Provisions) Bill 2024 - Pre Legislative Scrutiny

Dear Seamus

We refer to the invitation from the Oireachtas Joint Committee on Housing, Local Government and Heritage (the '**Committee**') to discuss the General Scheme of the Housing (Miscellaneous Provisions) Bill 2024 (the '**General Scheme**') on Tuesday, 23 April 2024.

At the outset, we thank the Committee for the invitation to discuss the General Scheme. We have had sight of it, notwithstanding the fact it is not publicly available, and we note its proposals to amend the Housing (Miscellaneous Provisions) Act 2009 to provide for legal and habitual residence as an eligibility criterion for social housing supports.

That stated, we respectfully ask that the Committee engage in a more comprehensive, structured and inclusive process of pre-legislative scrutiny, to include the input of relevant experts, stakeholders and advocacy and representative organisations, beyond a single session next week.

We further note that it is imperative that any such participants be given sufficient detail and time to engage and contribute meaningfully and constructively with any proposed legislative amendments, particularly in circumstances where the proposed amendments could have acute and devastating impacts on the ability to access vital and basic supports.

Since late 2022, we have been working collectively with our colleagues in other legal and advocacy groups, including Free Legal Advice Centres (FLAC), Mercy Law Resource Centre and Crosscare, to emphasise the need for caution and detailed consideration of any proposals to add residence criteria for access to social housing supports and/or emergency accommodation.

From our preliminary review of the General Scheme, we are gravely concerned that the proposals are unworkable, unduly restrictive and may indeed be contrary to EU law. Indeed, we intend to shortly issue a separate joint letter to the Committee and to the Minister for Housing, Local

Government and Heritage (the '**Minister**'), along with our colleagues in other legal and advocacy groups, detailing our concerns.

It is our view that a comprehensive, structured and inclusive public and expert consultation process should be undertaken, prior to any such proposals being advanced. We intend to ask the Minister for same in the above-referenced letter.

In relation to the pre-legislative scrutiny next week, we strongly urge the Committee to extend the invitation to other expert legal and advocacy organisations and provide for more time, to allow for a more robust and meaningful scrutiny process. We would be more than happy to participate in such a process, along with our colleagues.

However, if the Committee decides to proceed with the pre-legislative scrutiny next Tuesday, we will make ourselves available, noting our above reservations.

We look forward to hearing from you.

Thank you and yours sincerely,



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