



Simon Communities of Ireland Submission to the Public Consultation on a Referendum on Housing in Ireland

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Introduction

The Simon Communities of Ireland has been working with people experiencing housing insecurity and homelessness for over 50 years in every corner of Ireland. We are proud to chair Home for Good and we strongly believe that Constitutional change is an essential underpinning for any successful programme to tackle our housing and homelessness crisis. The Simon Communities of Ireland fully endorse and support the Home for Good submission to the Consultation.

A Constitutional right to housing is not a new or radical idea. Eighty-one countries around the world have a constitutionally protected right to housing, including several of our European counterparts such as Belgium, Finland, Greece, the Netherlands, Portugal, Spain and Sweden.¹

The consultation asks submissions to consider whether there should be a constitutional amendment and if so what form it should take. This submission will answer these two questions and speak to the need to ensure the development of this referendum.

Should there be a constitutional amendment and what form should it take?

The Simon Communities of Ireland believe and support the call made by many organisations, that a referendum is held on the right to housing. Although the Government has committed to hosting a referendum on housing, there is no commitment that the referendum will lead to a constitutional amendment to enshrine a right to housing. This is a very important distinction.

The Simon Communities of Ireland believe that the Commission, having taken the time to gather legal and housing expert together, should make the optimal use of this comprehensive consultation and propose a wording for a constitutional amendment that creates a balanced, stand-alone, and enforceable right to housing. Ideally, proposed wording from the Commission would build on the work already done in this area by Home for Good legal subgroup.

Highlighted below is the recommended wording for a constitutional amendment², along with explanation for the need to have a balanced, stand-alone, and enforceable right to housing.

Recommended Wording Developed by Home for Good:

The insertion of a new Article 43A on Housing in the Constitution as follows:

Housing

Article 43A

1 The State recognises, and shall vindicate, the right of all persons to have access to adequate housing.

2 The State shall, through legislative and other measures, provide for the realisation of this right within its available resources.

¹ MLRC, 'The Right to Housing in Ireland'. Available at: <https://mercylaw.ie/wp-content/uploads/2019/06/MLRC-Report-on-Right-to-Housing-in-Ireland-May-2016.pdf>

² More information on the Home for Good Wording and it's development is available here: https://www.homeforgood.ie/assets/files/pdf/note_from_the_legal_sub-group_expanding_on_standalone_right_-_october_2020.pdf

1. The Need for a Balanced Right

People experiencing ongoing housing insecurity in a turbulent housing market are failed by an imbalance in our Constitution. Bunreacht na hÉireann currently provides protection of private property rights in both Article 43 and Article 40.3. There is no equivalent right to housing in the Constitution. This means that the starting point of every legal analysis in respect of the regulation of land begins from the perspective of a property owner's right. While this right may be restricted in the interests of the common good, the starting point for analysis remains the private interest, with the common good only relevant insofar as it justifies the State in limiting this right to private property. As a result, the Constitution perceives property as a private interest held by a rights holder, with the common good cast in opposition and the State given the role of protector of this private right.

A more effective and proactive Constitutional approach, in the context of the current crisis and in preventing future crises, would be to continue the existing protection for private property rights but weigh these against a right to housing. In this scenario, the legislature and the courts would be tasked with balancing two rights against each other, subject to the usual restrictions around proportionality and rationality.

This would remove the current overly narrow interpretation of private property rights and enable the Government to respond to the current housing and homelessness crisis in a manner, which properly and fairly balances competing interests. Not only does this create a fairer balance, it will better frame the State's role in housing — not only as a protector of private property rights but also as a protector of our human right to safe and secure housing.

2. The Need for a Stand-Alone Right

Policymakers have repeatedly ruled out progressive housing policies to tackle the current crisis, on the grounds that the constitutional protection of private property presents a strong barrier to State intervention. An 'Oireachtas Research Paper' published in September 2019³ exposes a very worrying pattern. It shows that on twelve separate occasions over recent years, pending legislation in the Dáil has not progressed due to the spectre of Article 43 being raised as a barrier.

Furthermore, recent proposals to extend the eviction moratoriums to prevent rising homelessness were not considered by Government, in part due to Constitutional protection of private property rights. This cannot be allowed to continue in face of the plight of those at the sharp edge of the housing shortage.

The Constitution needs a right to housing as a stand-alone right of equal value to the right to private property. Owner-occupiers will have increased constitutional protection under a new stand-alone right to housing. An owner-occupier will have the right to private property, the right to housing and the right to inviolability of the dwelling to protect their home. None of these rights are absolute, but it is worth stressing that a person who lives in a home that they own will have nothing to fear from this proposed amendment and will, if anything, have their rights strengthened.

3. The Need for an Enforceable Right

As a directly enforceable right, it is necessary to state the recognition and guarantee of the right in plain terms. However, as what is being proposed is a socio-economic right, it will involve positive duties being placed on the State and must have some regard to resources. As such, it is necessary to

³ Keyes, "Briefing Paper: Property Rights and Housing Legislation", Oireachtas Library and Research Service, 2019. Available here: https://colettekelleher.ie/wp-content/uploads/2020/01/Enquiry-2019_715-Property-rights-and-housing-legislation.pdf

affirm the positive obligation to realise the right and the conditions attaching to that obligation. This has already been achieved in Article 42.4 in respect of the right to primary education and a similar approach is recommended here.

A constitutional amendment providing for a standalone right to housing will not guarantee everyone a house, never mind a “free” house. Rather, the right provides for generalised access to housing to an appropriate standard. It is expected that it would operate similarly to the right to education in Article 42.4, which has been a significant impetus for action but has never guaranteed parents the right to a school of their choosing in the location of their choosing.

Why do we need a Constitutional Right to Housing?

A Constitutional right to housing would be a catalyst for change that would re-prioritise the delivery of housing on a national level.

It is argued by some that there is nothing in our Constitution that prohibits or restricts the Government from providing housing for people in Ireland. Despite this, we have a housing crisis spiralling out of control. Homelessness is on the rise, rents have been unsustainably high, and housing stock available for renters and buyers is at an all-time low.

While it is true that nothing inhibits the Government from providing housing, nothing obligates them to do so. The Constitution is a statement of fundamental values that the people of Ireland believe in. It shapes all Government policy and legislation. At present, housing is not stated within these values. As a result, housing has not been given its due priority and urgency.

The absence of the right to housing works in sometimes subtle ways to perpetuate the housing and homelessness crisis. Working on the front-line, we can see what a right to housing would mean for those experiencing housing exclusion, homelessness, and or living in inadequate, unsafe, or overcrowded accommodation.

Increasing Homelessness

The latest figures from the Department of Housing, Heritage and Local Government⁴ show the number of people in emergency homeless accommodation has risen for the sixth consecutive month. 10,568 people are now living in emergency homeless accommodation, a 30% (2,436 people) year-on-year increase in the number of people experiencing homelessness; a record high number of people in homelessness.

There was also a record number of adults (7,431) and people aged 45-65 (2,041).

⁴ Available at: <https://www.gov.ie/en/collection/80ea8-homelessness-data/>

Total Number of People living in Emergency Homeless Accommodation in Ireland, 2016 - present



Chart: Simon Communities of Ireland • Source: Department of Housing, Local Government and Heritage • Created with Datawrapper

Increasing Rents and a Lack of Affordable Properties

In our quarterly *Locked Out of the Market* research report, we examine the availability of properties available to rent in 16 major towns and cities throughout the country. Results show a rapid decline in the number of properties available to rent at any price and within HAP rates. Our latest June report found:

- 657 properties available to rent at any price within the 16 study areas; a 70% drop in the number of properties available year-on-year from June 2021;
- 37 properties affordable within HAP rates; a 54% drop from January 2022 (80) and a drastic 869 less than the 906 HAP properties available in June 2021;
- drop in the proportion of HAP properties available to rent with only 5.6% of properties in June 2022 affordable under HAP; a drop from 11% in March 2022 and December 2021.

The latest Rent Index from the Rental Tenancy Board (RTB)⁵ shows that national average rent for new tenancies now sits at €1,460; a 9.2% year-on-year increase. The report also noted a 32% drop in the number of new tenancies in Q1 2022 (10,414) compared to Q1 2021 (15,291).

The housing homelessness crises are closely intertwined. Unaffordable rents and a low supply are reflected at every level of society; young people are living with their parents longer, as less people own their homes older persons' struggle to keep pace with rents, and the number of people living in emergency accommodation continues to grow steadily.

An unstable rental market combined with a lack of availability and affordability can force people into tenancy breakdown, housing insecurity, and into homelessness. State supports are no longer meeting the needs of low-income households and protect them from homelessness.

While we do not argue that a right to housing would be a panacea for all these ills, it would refocus the need for suitable, affordable, and social housing in Ireland. This in turn can make a meaningful impact to the ever-rising levels of homelessness.

⁵ Q1 2022 Rent Index, Available at: <https://www.rtb.ie/news/rtb-publishes-q1-2022-rent-index/>

What Would a Right to Housing Achieve? A Catalyst for Change

The Constitution is a statement of fundamental values that the people of Ireland believe in. It shapes all Government policy and legislation. A home is fundamental for a persons' dignity and necessary to form a foundation for life.

The recommended balanced, stand-alone, and enforceable amendment gives a constitutional framework for State involvement in the provision of housing for those who cannot house themselves. It places a positive constitutional obligation on the State to act, rather than, for example, to adopt an entirely passive market-led approach to housing.

This already occurs, to some extent, at a statutory level through the Housing Acts, but the obligation would be raised to a constitutional level and balanced against the right to private property. It would become the touchstone against which all action or inaction by the State would be measured.

The imbalanced Constitutional structure has proven repeatedly to fail people in need of housing. It perpetuates high levels of vacancy and dereliction across the country, it allows for land hoarding, and it has contributed to our national housing crisis.

Including a Right to Housing in the Constitution would not by itself solve our current housing crisis. However, it has an enormous potential to be a catalyst for change. Including a Right to Housing in our Constitution places an onus on the State to develop and implement policy and practice that will meet the right to adequate housing of our citizens, and safeguard against future housing crisis' from occurring the first place.

A right to housing in our Constitution provides every level of Government with a guiding principle and a commitment to ensuring there are sufficient homes for all of our people. In practical terms, this means refusing to accept endemic housing crisis in our society. It means a new level of respect for the levels of affordable housing and social housing needed. It means having sufficient levels of housing suitable for people's needs including housing with universal design for people with disabilities, catering to the housing needs of our ageing population, for members of the Travelling Community, and housing for small and large families alike.

Conclusion

The Simon Communities of Ireland are deeply concerned about the continually unfolding housing and homelessness crisis. Incremental supports and developments are no longer enough to protect people from homelessness. Ireland is home to strong homeless prevention and support polices, but success will always be limited when housing is unavailable. We need to reprioritise housing as the critical social and economic infrastructure that it is. Introducing a constitutional right to housing is the change we need.

The Simon Communities want to ensure that the people of Ireland have timely access to a referendum that will result in a right to home. To ensure the proposed wording leads to a meaningful constitutional change, the proposed amendment needs to create a balanced, stand-alone, and enforceable right to housing. Ideally, proposed wording from the Commission would build on the work already done in this area by Home for Good.