

# Housing (Miscellaneous Provisions) Bill 2024

SUBMISSION TO THE JOINT OIREACHTAS COMMITTEE ON HOUSING, LOCAL  
GOVERNMENT AND HERITAGE

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## Introduction

The Simon Communities of Ireland would like to thank the committee for the opportunity to present our submission for consideration as part of the pre-legislative scrutiny of the Housing (Miscellaneous Provisions) Bill 2024.

Simon Communities of Ireland are a network of independent Simon Communities across the country that provide homeless, housing and treatment services to people experiencing or facing the trauma of homelessness. We are therefore acutely aware of the positive and negative impact that housing policy, legislation and its implementation can have on those we work with.

In this submission we would like to raise our concerns regarding the proposed insertion of the Habitual Residency Condition as set out in the Heads of Bill as we believe this has the potential to cause an increase in homelessness.

Given the month-on-month record homeless numbers, this would put further pressure on homeless services already operating at close to or above capacity.

## Eligibility for Assessment

It is noted that the proposed legislation if enacted would prevent, those who a local authority deems not to meet the habitual residence condition, from making a social housing application: as set out under Head 5, (1) *“in order to be eligible to be assessed.”*

If the legislation is to go forward any new qualifying criteria for social housing support should form part of the social housing application process for all to ensure that there is equitable treatment in the system.

## Directive 2004/38/EC

We note that in addition to the habitual residence condition, there are also mechanisms within Directive 2004/38/E, referenced within the Bill, that secure residency rights. For example, in Article 17 of that directive, which sets out ‘*exemptions for persons no longer working in the host Member State and their family members*’. The article sets out several situations whereby the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence. It is noted that provisions such as these need further consideration in the context of the proposed legislation.

We also note that there is a provision that seeks to exclude EU citizen from assessment for housing need during the first 3 months of residency. It is our understanding that the provision of EU law direct that an EU work shall have the same entitlement as an Irish worker and cannot be discriminated against.

While it may be possible to make the case that a worker has not set out a level commitment to remaining in the state that shows ‘a long-term housing need,’ this cannot be assumed.

## The Semi-Judicial Nature of Decision Making

A household's application for social housing is currently subject to right to reside test by local authorities under Circular 21/2012. One of the significant failings of Circular 21/2012 has been that it does not adequately consider the range of circumstances in which a person can attain a right to reside. This highlights that the complexity of these aspects of law must be given due consideration.

The notes under Head 5 of the Bill speak to this complexity.

*In preparing these Heads, full engagement took place between the Department and the Departments of Social Protection (DSP) and Justice. DSP advised that, while their officers will also be making separate determinations relating to habitual residence, it would not be possible to use the same decision made by their officers for the purposes of assessing social housing support, while the Department of Justice indicated that it would not be possible to accept referrals from local authorities and provide a confirmation letter stating whether an applicant is legally resident in the State.*

There is a long history of difficulty surrounding decision making in respect of habitual residency. This is because the determination of habitual residency does not lend itself to easily defined administrative rules.

It is instructive to consider the following from the guidelines provided to social welfare deciding officers re: the five factors of Habitual Residency:

*It must be noted however that these factors are not exhaustive, and a Deciding Officer/Designated Person is not precluded from using any other evidence considered relevant to a case in deciding on a claim.*

*No one factor is decisive, and it is not necessary for a person to score strongly on all five factors in order to get a positive decision. The first three points are strong indicators that a person is habitually resident but equally the person could qualify on just the last point if they can show strong evidence as to their future intentions as regards residence here.<sup>1</sup>*

In addition, we note that the Social Welfare Act, from which the determining factors of the habitual residence condition outlined in the Bill are taken, was amended to include habitual residency almost 20 years ago there are still cases of incorrect decisions.

We recognise that contained in the proposed Bill are provisions for the Minister to issue guidelines in relation to the determination of habitual residency to housing authorities. However, we are concerned that local authority housing staff are not currently equipped with the necessary expertise to make such determinations, given the semi-judicial nature of decisions to be made.

A key point of difference here being that the social protection system has a robust administrative appeals system as discussed further below.

## Appeals Process

Given that the determining factors for habitual residency are taken from social welfare legislation, we note that a key difference between social protection and social housing is that there is no appeals process for social housing legislated for.

Under the Social Welfare Consolidation Act 2005 there are statutory provisions for appealing the decisions made by determining/deciding officers.

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<sup>1</sup> Operational Guidelines: For Deciding Officers and Designated Persons on the determination of habitual residence. Available at: <https://www.gov.ie/ga/foilsuichan/fc9c5e-operational-guidelines-for-deciding-officers-on-the-determination-of/#five-factors>

There have been several cases whereby the refusal of social welfare support by deciding officers on the basis of the habitual residence condition have been overturned on appeal.<sup>2</sup>

The notes under Head 5 of the bill outline the provision of consistency as to how State entities assess social entitlements as one of the objectives of the proposed legislation.

Therefore, in the interest of consistency we emphasise the need for similar statutory provisions around decision-making and appeals processes for the purpose of social housing assessments.

The absence of an appeals process is particularly concerning for the Simon Communities of Ireland as access to social housing supports are of critical importance in preventing and ending homelessness.

## Access to Emergency Accommodation

It is the experience of the Simon Communities of Ireland, along with colleagues in the sector, that there is a practice among local authorities of denying or creating a hierarchy of access to emergency accommodation based on entitlement to social housing, particularly based on 'local connection.' This is despite section 2 of the Housing Act 1988 setting out the sole statutory basis for determining whether someone is homeless.

*A person shall be regarded by a housing authority as being homeless for the purposes of this Act if –*

- (a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or*
- (b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in paragraph (a),*

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<sup>2</sup> Examples of Decision's on Habitual Residency Successfully Appealed:  
Social Welfare Appeals Office Annual Report 2022: Case Study 18 and Case Study 63.  
Social Welfare Appeals Office Annual Report 2020: Case Study 2, Case Study 21, and Case Study 35.  
Available at: <https://www.gov.ie/en/collection/ae6ada-news-and-publications-from-the-social-welfare-appeals-office/>

*and he is, in the opinion of the authority, unable to provide accommodation from his own resources.*

Therefore, anyone who meets the above criteria is considered homeless under the Act and should therefore be eligible for support from a local authority under section 10 of the 1988 Act. Currently, there is no statutory basis for eligibility for social housing support as a determining factor for access to homeless emergency accommodation.

Given recent proposals brought before the National Homeless Action Committee to limit access to emergency accommodation, we would like to see a reaffirmation explicitly set out in primary legislation that any limitation of access to social housing support does not have any impact on the humanitarian support of emergency accommodation.

The proposed Bill should not impact on an individual's right to shelter. Emergency accommodation is a safety net and a last resort, and therefore those that do not fulfil habitual residence conditions/local connection should not fall through cracks created by legislation.

## Conclusion

The Simon Communities of Ireland emphasise that the proposed provisions within the Housing (Miscellaneous Provisions) Bill 2024, particularly concerning the insertion of the habitual residence condition, warrant careful consideration due to their potential impact on homelessness and housing exclusion in Ireland.

The provisions as currently framed could have devastating impacts on migrant households with no or limited recourse to appeal or redress. While one stated aim of the proposed legislation is to establish consistency in how State entities assess access to social entitlements, the lack of statutory provisions regarding decision-making and appeals processes within the Housing (Miscellaneous Provisions) Bill 2024 stands in contrast with such provisions outlined in the Social Welfare Consolidation Act 2005.

Simon Communities of Ireland emphasise the experience of local authorities requiring eligibility to social housing with access to emergency accommodation, for which there is no legal basis.

We suggest that at a minimum there is a need to explicitly set out in the primary legislation that the habitual residence condition for the purpose of social housing does not affect and should not affect an individual or a household's eligibility for access to emergency accommodation.