

Housing Rights

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Consultation response

**Response to consultation on proposals to
amend the legislation to help tackle anti-social
behaviour**

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1.0. INTRODUCTION

1.1. About Housing Rights

Housing Rights is Northern Ireland's leading independent provider of specialist housing advice. For almost 60 years we have been helping people to find and keep a home. We believe that prevention is better than the cure. Our work seeks to ensure individuals and families living in Northern Ireland do not reach this point of crisis. We recognise however that this is not always possible, and we also provide advice and assistance to help alleviate homelessness for people who, for whatever reason, find themselves facing this crisis. Housing Rights believe passionately that no-one should be without a home and work tirelessly towards the goal that every citizen in Northern Ireland has a decent, safe and affordable home to live in. In particular, the organisation's services are targeted at people who need help to:

- Prevent them from becoming homeless;
- Find suitable rented accommodation;
- Sustain their tenancies;
- Explore their housing options;
- Avoid repossession and eviction;
- Tackle disrepair or poor conditions in their homes; and
- Meet their housing costs;
- Repay mortgage and/or rent arrears;
- Resolve disputes with their landlord and/or lenders.

In the year ending March 2023, our advice services dealt with enquiries from over 13,000 households on over 53,000 housing issues. We provide a specialist housing helpline open Monday to Friday complemented by a digital Live Chat service accessed through a comprehensive and user-led advice website www.housingrights.org.uk. Our busy frontline advice service is supported by an advocacy and representation service staffed by dedicated caseworkers and a small legal team who prevent and alleviate homelessness by liaising with landlords, lenders and other agencies as well as provide representation for County and High Court.

In addition to preventing homelessness, our services also assist in promoting access to justice by providing an emergency court representation service (Housing Possession Court Duty Scheme) which assists households at risk of homelessness due to mortgage or rent arrears who are unrepresented in court proceedings. Since December 2019, we have also administered a Housing Mediation Service to address and avoid the escalation of disputes to prevent homelessness.

The reach and expertise of our advisors also extends to Northern Ireland's prisons to assist those entering or leaving custody to safeguard tenancies and/or to access appropriate support to prevent homelessness on release.

We work to support communities and other frontline advisers across Northern Ireland by providing a well-established practitioner support programme, through our Community Housing Advice Partnership and through a comprehensive training and legal information service.

In addition to our frontline specialist advice, representation and support services, Housing Rights has a policy and participation service which influences government policy decisions to improve housing

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and homelessness in Northern Ireland. Our policy work is informed by the views and experiences of the people who contact us for advice and aims to support the identification of evidence based, informed solutions.

1.2. The nature of our response

Our work supporting people in housing need and at risk of homelessness in Northern Ireland means that that we are expertly placed to comment on the increasing difficulties many people are facing, and will continue to face, to keep a home.

Indeed, many of the people in contact with our housing advisors each day have encountered anti-social behaviour (ASB) and are seeking advice on how to deal with it. Additionally, some people in contact with Housing Rights have been involved in or accused of ASB. These people seek advice from Housing Rights on a range of issues, including the processes that the Northern Ireland Housing Executive (NIHE) employs to deal with ASB, advice on how to challenge an accusation of ASB, or signposting to support services to address their own behaviour and tackle the root cause of their behaviour which has been perceived as anti-social.

Housing Rights delivers the Housing Advice in Prisons project, which is jointly funded by the Northern Ireland Prisons Service and the NIHE. This project assists those entering and leaving custody and safeguards tenancies and access to appropriate support to prevent homelessness on release. There are clear links between homelessness and reoffending¹ and access to stable homes for ex-offenders has been evidenced as reducing reoffending by as much as a fifth.² This work has been credited by the Northern Ireland Audit Office as contributing to reducing rates of reoffending in Northern Ireland.³

Housing Rights therefore has direct experience of working with tenants who have been victims of ASB and those who have perpetrated ASB. Our primary objective as an organisation is the prevention of homelessness, believing that access to a safe, affordable and stable home for everyone will lead to a healthier, happier and more productive society.

In relation specifically to this consultation, we believe that access to safe and stable accommodation can reduce instances of criminogenic (causing or likely to cause criminal behaviour) circumstances arising which may lead to ASB or criminality. Further, with homelessness itself being a criminogenic risk factor, we believe access to a stable home can reduce interaction with the criminal justice system, which in itself has been evidenced to be criminogenic in nature.⁴

This evidence-backed belief combined with our unique experience with people in housing need who have experienced ASB from both sides will inform Housing Rights' response to the proposals outlined in this consultation. We believe the proposals contained in the consultation document to be unnecessary, unjustified and unjustifiable.

¹ [Homelessness prevention for care leavers, prison leavers and survivors of domestic violence, All Party Parliamentary Group for ending Homelessness, 2017](#)

² [Accommodation, homelessness and reoffending of prisoners: Results from the Surveying Prisoner Crime Reduction \(SPCR\) survey \(publishing.service.gov.uk\)](#)

³ [NI Audit Office Report - Reducing Adult Reoffending in NI](#)

⁴ [An Evidence Review of Recidivism and Policy Responses](#)

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Housing Rights will not respond to the proposal in relation to Drinking in Public, as this sits outside our expertise. In this respect, we endorse the response of our colleagues at Homeless Connect, who have extensive experience in this matter and address this issue in their response. Housing Rights' response however, relates to all other proposals.

2.0. Overarching Concerns

In this section Housing Rights' will lay out our overarching concerns, then address each issue in relation to the proposals. The exception to this is our concern around a lack of an Equality Impact Assessment, which will merit its own section. Our overarching concerns are as follows:

- Lack of an Equality Impact Assessment (EQIA).
- There is a clear lack of evidence as to why such measures are needed at a time when rates of ASB incidents are decreasing. Rather, the proposals appear to be on the basis of landlord demands and a willingness to align with English law.
- The proposals fail to sufficiently take account of ASB in a Northern Ireland specific context, nor is there any appreciation of the connotations and risks associated with attaching labels such as 'anti-social' to people in Northern Ireland.
- The proposals are insufficient to tackle the root causes of ASB and fail to take into consideration contributing factors such as mental ill-health.
- The consultation fails to provide any rationale for a reduction in the threshold for an Anti-Social Behaviour Order (ASBO) and proposes an extremely subjective threshold i.e. that behaviour, 'capable of causing nuisance or annoyance,' can result in an ASBO. This is particularly concerning given that the Departments also propose that breach of an Order can result in Absolute Grounds for Eviction.
- The proposals run contrary to the Department for Justice's (DoJ) Protocol for Restorative Justice and blur the distinction between the civil and criminal law.
- The policy proposals will frustrate the policy direction of other public bodies and community and voluntary sector organisations with regard to homelessness prevention.
- The proposals risk people being evicted from their homes and entering the criminal justice system despite never having committed a criminal offence.

3.0. Equality Impact Assessment

Housing Rights notes with concern that despite the potential for adverse impact on numerous section 75 groups as identified in the Equality Impact Screening documentation on these proposals,⁵ there has been no Equality Impact Assessment carried out. Housing Rights believes this to be in breach of both the Department of Justice (DoJ) and the Department of Communities' (DfC) statutory obligations under section 75 the Northern Ireland Act 1998.⁶

We do not believe that the Equality Screening exercise that was carried out on these proposals is either comprehensive or adequate and fails to consider the true impact of the proposals on members of the protected section 75 group. Nor does it acknowledge societal causes which influence ASB being carried out.

⁵ [Equality Impact Screening](#)

⁶ [Northern Ireland Act 1998 \(legislation.gov.uk\)](#)

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Housing Rights disagrees profoundly with the Equality Screening's assessment of level of impact on members of the protected section 75 groups, particularly in relation to the categories of age (under 25), gender and disability. The screening acknowledges that members of the public with multiple identities in each of these categories will be impacted by proposals for positive requirements. It does not consider there to be any further impacts of note. Housing Rights both struggles to comprehend how various other impacts of the proposals have failed to be considered, and disagrees with the conclusion that an EQIA is not necessary on the grounds that the potential impacts are not more likely to impact specific categories as a result of the proposals but, as the screening suggests, "is not as a result of any specific impact of the proposals, but rather is based on the categories of individuals who engage in this type of behaviour." This represents a misinterpretation of the purpose of an EQIA and the circumstances under which an EQIA should be carried out. It is precisely because certain categories are more at risk of engaging in a behaviour that legislative proposals addressing that behaviour will be likely to impact those categories disproportionately. It is for this reason that a comprehensive EQIA must be carried out to thoroughly identify the potential for adverse impact on members of the nine protected section 75 groups as a result of these proposals. Where a potential for disproportionate adverse impact is identified, as we believe it will be, mitigations should be put in place or alternative policies considered which do not adversely impact on members of the protected section 75 groups.

Housing Rights contends that the position taken in this consultation is flawed; that there is a potential differential impact on young men but that this differential impact is as a consequence of this group choosing to offend – i.e. the group is self-selecting, and the impact is not a consequence of this proposal. If this was a tenable approach, it would have the impact that section 75 of the Northern Ireland Act 1998 does not apply to the criminal justice system in its entirety. This interpretation is also in direct conflict with the Equality Commission's findings in its Investigation under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 – Children's Law Centre and the NIO.⁷ In its Investigation Report, the Equality Commission made it clear that the intention of a designated public body is irrelevant in deciding whether or not to carry out an EQIA, as is the argument that any over-represented group is self-selecting. It is clear from the Equality Commission's statement below that section 75 is not about the intention for adverse impact, nor is it sufficient to fail to properly consider greater impact on enjoyment of equality of opportunity as a result of young males self-selecting to come into conflict with the criminal justice system and becoming consequently over represented, but rather it is the potential for adverse impact which must give rise to proper consideration for carrying out an EQIA. Where there is a recognition that there is potential for differential adverse impact on any members of the nine section 75 categories, this must give rise to the proper consideration being given to carrying out an EQIA.

In the Final Report of the Equality Commission's Investigation under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 – Children's Law Centre and the NIO, the Equality Commission stated that,

"...the purpose of screening, as set out in the Commission's Guide to the Statutory Duties, is...to identify those policies which are likely to have a significant impact on equality of opportunity..."

⁷ 2006

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*The Commission did not accept that the... reasons for not undertaking an Equality Impact Assessment, which focussed on the reasons for adverse impact and the fact that such impact was not intentional, rather than the potential for adverse impact, represented a proper consideration of whether the policy was “likely to have significant impact on equality of opportunity”.*⁸

In addition, section 75 of the Northern Ireland Act 1998 requires more than avoidance of adverse impact, it also requires a proactive approach to be taken by designated public bodies to ensure the promotion of equality of opportunity. The Equality Commission’s Section 75 Guide for Public Authorities states that,

*“The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to facilitate the promotion of equality of opportunity between the categories identified in Section 75 (1). The equality duty should not deter a public authority from taking action to address disadvantage among particular sections of society – indeed such action may be an appropriate response to addressing inequalities.”*⁹

Given that the consultation document acknowledges the disproportionate potential for adverse impact on members of the nine protected groups, we wish to highlight the statutory obligation on both Departments to put in place additional proactive measures to promote equality of opportunity, as outlined above.

3.1. Positive Requirements

We note that the screening document suggests the inclusion of, ‘positive requirements,’ as an acceptable mitigation and potential justification for the decision not to carry out an EQIA. The screening document states that,

*“...the proposals seek to include positive requirements in ASBOs to assist in addressing the underlying causes of the anti-social behaviour, therefore increasing the possibility of benefiting those engaged in ASB by keeping them out of the criminal justice system.”*¹⁰

Housing Rights considers the imposition of positive requirements in an ASBO as the answer to addressing the underlying causes of ASB to be a considerable oversimplification of the complexities involved in why some people engage in ASB. The Equality Screening document provides no interrogation of how positive requirements would operate, how these would be resourced, nor does it examine their success or failure in other jurisdictions. The consultation document, in paragraph 4.12, prompts, ‘further consideration,’ around the operationalisation of positive requirements, but provides no framework or clarity on how this process might begin. Housing Rights would expect that, in a consultation document which otherwise provides extreme clarity in redesigning ASBOs and providing for Absolute Grounds for Repossession, the same level of attention and clarity should also apply to the equality screening, proposals for mitigation and the consideration of alternative policies which will not have the same impact on the enjoyment of equality of opportunity.

In England, where positive requirements are implemented policy for a number of Behaviour Controlling Orders (BCO), a recent report by *Justice* highlights serious concerns around capacity to

⁸ SDI/22/04

⁹ Chapter 5, Equality Commission’s Section 75 Guide for Public Authorities

¹⁰ Page 22, DOJ Section 75 EQUALITY SCREENING FORM Title of Policy: Anti-social Behaviour

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enable them to be fulfilled at all, and reports that, without proper accreditation, they may actually cause further harm. Indeed, calls from enforcement bodies to support positive requirements and greater support for victims do not appear to have been successful.¹¹

The same report highlights a lack of culturally appropriate positive requirement programmes for ethnic minority recipients to participate in. This is an impact on members of the protected section 75 category of race, yet this has not been considered in the equality screening exercise.

Justice goes further in their report, recommending that:

“The Home Office must investigate, and thereafter set out, the costs associated with training, enforcement, and the provision of services to fulfil positive conditions in the Impact Statements that accompany legislation to introduce new Orders. The Home Office should also stipulate how such costs will be met. It must consult with relevant experts across the enforcement bodies to understand the costs associated with enforcement and training and set out how the Home Office intends to address any shortfalls in resources.”

On the evidence presented in the consultation document, there is yet to be a scoping exercise carried out by either DfC or DoJ into how and by whom resourcing of positive requirements, the only mitigation put forward as justification for the decision that an EQIA is not necessary, will be met.

The issue with this is two-fold. Firstly, the equality screening fails to appreciate the full extent of the adverse impact on members of the section 75 groups that these proposals will have and so has no way of estimating the cost of fully funded, professional positive requirement schemes. Secondly, despite a recent financial settlement struck between the newly formed Northern Ireland Executive and the UK Government, Northern Ireland’s public services have been consistently underfunded, resulting in Departments receiving consecutive real terms cuts to their budgets and making cuts to numerous front-line support initiatives.¹²

With evidence that under resourced positive requirement programmes already in place in England have the potential to actually cause more harm, no clarity on how much an effective set of programmes would cost in Northern Ireland, and a challenging budgetary position facing the Northern Ireland Executive, it is difficult foresee positive requirements as a mitigation measure at all. It is unacceptable to Housing Rights that provision for effective positive requirements, which is the sole mitigating measure and person-centred consideration in these proposals, justifies only several lines of the document and offers no detail beyond, ‘further consideration.’

In the absence of any genuine mitigation to the various adverse impacts which are likely to flow from the proposals being presented, Housing Rights submits that a thorough and comprehensive EQIA should be carried on these proposals as a matter of urgency. Housing Rights believes that the failure of the Departments to do so is a clear breach of their statutory obligations under section 75 of the Northern Ireland Act 1998.

This is an issue which we are deeply disappointed we have to raise with the government Departments with responsibility for policing, justice, community support and housing, particularly

¹¹ [Lowering-the-Standard-a-review-of-Behavioural-Control-Orders-in-England-and-Wales-September-2023.pdf \(justice.org.uk\)](#)

¹² [Budget 2023-24 Equality Impact Assessment \(communities-ni.gov.uk\)](#)

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given that the Children's Law Centre and nine other organisations lodged a complaint under Schedule 9 of the Northern Ireland Act 1998, challenging the fact that the NIO, upon introducing the ASB Order legislation, did not discharge its section 75 obligations correctly. The Equality Commission, in its decision approved on 27th April 2005, found that the NIO did not apply its screening criteria correctly, did not carry out an Equality Impact Assessment, despite recognising the potential for differential impact on the grounds of age and gender and did not record any reasons for its decision not to carry out an Equality Impact Assessment, failing to properly, 'consider,' as required in its approved Equality Scheme. In the absence of adequate reasons not to do so, the Commission was satisfied that consideration of an EQIA in the circumstances should have led to the undertaking of an assessment (EQIA). Although the NIO sought to set aside the Equality Commission's decision (now) Lord Justice Girvan declined to do so in *Re. Neill's Application*,¹³ the Equality Commission's decision therefore stands in its entirety. For this reason, we would have expected the Departments with responsibility for policing, justice, community support and housing to stringently comply with its obligations under section 75 of the Northern Ireland Act 1998. We contend that this has not been the case with regard to these proposals. **We would therefore urge the Departments to address this issue without delay and carry out a comprehensive EQIA on these proposals.** Housing Rights believes that there is both a constitutional and legal imperative to do so as contained within section 75 of the Northern Ireland Act 1998 and a moral imperative given the potential of section 75 to protect against the introduction of legislation, policy and practice which has significant potential for differential adverse impact to be experienced by multiple members of the section 75 protected groups.

3.2. Additional Impacts

The lowering of the threshold of behaviour that constitutes ASB for the purposes of an ASBO is itself has the potential to have a major impact on members of a number of protected section 75 categories. The consultation proposes to amend the definition of ASB from:

"Conduct that caused or is likely to cause harassment, alarm or distress to one or more persons not of the same household as himself," to

"Conduct capable of causing nuisance or annoyance to a person in relation to that persons occupation of residential premises" or

"Conduct capable of causing housing-related nuisance or annoyance to any person."

This lowering of this threshold will undoubtedly make it much easier for a person to be served with an ASBO, greatly increasing their risk of interaction with the criminal justice system, and having restrictions placed upon them. The equality screening document identifies that a higher percentage of males with mental health/addiction issues under 25 will be impacted by the positive requirement proposals, but fails to similarly conclude that members of these groups will also be impacted by the lowering of the ASBO threshold. Considering that the imposition of positive requirements can only be achieved through the imposition of an ASBO or injunction, it unequivocally follows that members of the same protected categories will be impacted.

Likewise, as the proposals also advocate for Absolute Grounds for Possession for those who breach an ASBO, Housing Rights submits that this policy will make it much easier for members of those

¹³ [2005] NIQB, 66

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identified protected categories to be made homeless. This, in Housing Rights view, constitutes a major impact on the enjoyment of equality of opportunity and should give rise to a comprehensive EQIA being carried out. **We believe that the equality screening decision has therefore been reached in error and would request that this is urgently reversed and a thorough EQIA is carried out in line with the Equality Commission's seven step process without delay.**

A further potential adverse impact on a section 75 category which has not been considered by the equality screening is the impact of these proposals on women. In England, through the Renters' Reform Bill,¹⁴ the Government is proposing to amend the ASB eviction ground, so that behaviour, 'capable,' of causing annoyance can lead to eviction, rather than behaviour, 'likely,' to cause annoyance.

The Government has been presented with considerable convincing evidence that the change in threshold could be used to evict a tenant with who is a victim of domestic abuse, who does not or cannot address the root causes of domestic abuse-related ASB. Victims of domestic abuse are overwhelmingly women and are four times more likely than other tenants to have ASB complaints made against them.¹⁵ The *Safe At Home* report states that this is often due to the misidentification of domestic abuse as ASB. Neighbours who hear frequent shouting, screaming or banging might report ASB when some of the residents, most often women and children, may be at serious risk of harm.

An instance such as this would not be mitigated against by the proposed powers of exclusion as in these cases, it is the victim who has been reported for the ASB and would therefore themselves be at risk of receiving an ASBO. By expressly linking the breach of an ASBO to Absolute Grounds for Possession, this policy runs the serious risk of making these victims and their families homeless. This has not been considered in the equality screening process and has significant potential for adverse impact to be suffered by some of the most vulnerable groups in society as a result of these proposals.

Housing Rights also believes that there is potential for significant adverse impact, that should be categorised as, 'major,' on people suffering from mental ill-health and / or learning disability that has not been considered through the equality screening process.

A survey of London Boroughs¹⁶ recognised that the links between ASB and mental health are complex and require careful exploration. This is entirely absent in the equality screening in this consultation. It cited an estimate that at least a third of young people given an ASBO had a mental health condition or learning disability. The survey also highlighted that people with mental health conditions are more at risk of being victims of ASB.

A discussion on ASB hosted by the *Scottish Community Safety Network* in 2020¹⁷ highlighted that, *'...many of the people seen as perpetrating ASB are also very vulnerable. Viewing them with compassion and empathy, rather than attributing stigma, is likely to help people receive support and reduce re-offending.'*

¹⁴ [Renters \(Reform\) Bill - Parliamentary Bills - UK Parliament](#)

¹⁵ [Safe at Home Report.pdf \(safelives.org.uk\)](#)

¹⁶ [Anti-Social Behaviour and Mental Health](#)

¹⁷ [Let's Talk About Anti-Social Behaviour \(safercommunitiesscotland.org\)](#)

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Housing Rights is aware of the stigma attached to people who receive an ASBO. This is particularly significant in a Northern Ireland context where non-state forces are still active and labelling people as being engaged in, 'anti-social behaviour,' can have serious implications for their safety. We do not believe that lowering the threshold for ASBOs is in line with a compassionate or empathetic approach. Rather, the imposition of an ASBO is likely to place vulnerable people under even more threat as the community becomes aware of the ASBO. In addition, people suffering from mental ill-health may find adherence to the conditions, both negative and positive, imposed in an ASBO extremely challenging to comply with. Disability is one of the protected groups under section 75, and having a mental health condition in itself may greatly increase the risk of breaching an ASBO, and consequently losing their home and entering into the criminal justice system, itself a criminogenic environment.

The equality screening document acknowledges that it is, '*widely reported*,' that ASB is frequently linked to mental health and addiction issues, but cites a lack of data as justification of only attributing, 'minor,' impacts to members of the disability category under section 75. Housing Rights considers it unacceptable that this conclusion has been reached in the absence of sufficient data and that the lack of data did not lead the Departments to conclude that further data is necessary. The statutory requirements to do so are outlined below. In particular, we would question why the evidence we have highlighted above and similar evidence has not been examined. Given one of the main justifications in support of these proposals is to align policy in this area with England, we would contend that there is a wealth of data available which examines the impacts on people with mental health issues over the time period of the operation of these policies in England which should have been taken cognisance of, a small selection of which we have provided for reference.

Secondly, there is comparable data available in Northern Ireland which should also have been considered. For example, 45% of offenders processed by the *Probation Board for Northern Ireland* between 2017-21 had some level of mental health issues which contributed to their offending behaviour.¹⁸ Given the linkages between criminal and ASB, there are obvious parallels which should have been drawn between mental ill-health and the likelihood of carrying out ASB. As these proposals both reduce the threshold for an ASBO and greatly increase the risk of homelessness, both of which elevate a persons' chances of coming into damaging contact with the criminal justice system, Housing Rights considers the impact of these policy proposals on the enjoyment of equality of opportunity by people with a disability to be, 'major'. It is wholly incorrect that proper consideration of this serious adverse impact on the enjoyment of equality of opportunity has not been carried out at the screening stage. **We therefore contend that the Departments have erred in reaching their screening decision and wish to request that this be urgently reversed and a comprehensive EQIA carried out.**

3.3. Lack of available data

The *Equality Commission's Practical Guidance on Equality Impact Assessment*,¹⁹ details a range of potential data sources and obligations on designated public bodies to collect data on all members of the nine section 75 groups. Where the data required to carry out a thorough analysis of impacts is not available, it states that public authorities should use qualitative or evaluative research or

¹⁸ [NI Audit Office Report - Reducing Adult Reoffending in NI](#)

¹⁹ Practical Guidance EQIA 1204 .doc (equalityni.org), February 2005

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information gathered by government and bodies such as voluntary, community and trade union organizations; identify gaps in available information for equality categories and where more detailed data are needed, take steps in order to have the optimum information on which to consult and base subsequent decisions; and if necessary, commission new data (qualitative or quantitative).²⁰

In carrying out an EQIA it is vitally important that the Department has a strong evidence base to ensure that policy decisions are made using robust data sources which allow for thorough and systematic analyses to be carried out. We do not believe that the limited data sources relied upon in carrying out the equality screening are sufficient to justify the decision not to carry out an EQIA, and even less sufficient to allow for proper consideration to be given to the potential impacts of the policy decision on the nine section 75 groups and mitigate against these. **Housing Rights therefore strongly urges the Departments to reverse its screening decision and carry out a comprehensive EQIA to allow for a thorough and systematic assessment to be conducted in line with the Department's statutory equality obligations under section 75 of the Northern Ireland Act 1998.**

4.0. Anti-Social Behaviour Orders (ASBOs) in Northern Ireland

4.1. Lack of evidence to justify proposals

Housing Rights recognises the arguments being put forward with regard to reforming the legislative framework governing ASBOs. We acknowledge the concerns highlighted in relation to the time and difficulty in preparing a file for court. As an organisation, Housing Rights regularly prepares court files for the purposes of our legal work representing clients facing repossession and challenging negative homelessness decisions. We too face capacity and time constraints and recognise these concerns as legitimate.

Housing Rights disagrees, however, that this is a sufficient rationale upon which to base legislative reform that will significantly lower thresholds for punitive sanctions to be placed on vulnerable people. The significance of the implications of the proposals contained in this consultation document are such that we believe that it is vital that people have full access to justice and to due process at every stage.

This section of the consultation is entirely absent of any empirical evidence base on which to assess the claims submitted by the concerned statutory bodies. It also lacks any clear evidence base which demonstrates why these reforms are necessary. Housing Rights is not aware of any renewed rise in ASB incidents, indeed the *Police Service of Northern Ireland's* (PSNI) own statistics on ASB demonstrate that incidents are at their lowest 12-month figure since recording began in 2006/7.²¹

Paragraph 4.9 of the consultation document acknowledges that according to the *Criminal Justice Inspection NI* (CJNI), the use of ASBOs in Northern Ireland has been proportionate, with an emphasis on intervention and diversion.

There is also evidence from England to suggest that the lower standard may lead to cases of ASBOs being applied in wholly disproportionate ways. The *Select Committee on Home Affairs* heard, in 2005, numerous examples of ASBOs being used to prohibit behaviours including, being sarcastic, riding a

²⁰ Section 4, Page 30, Practical Guidance EQIA 1204 .doc (equalityni.org), February 2005

²¹ [Anti-Social Behaviour Incidents Recorded by the Police in Northern Ireland Update to 31st December 2023 \(psni.police.uk\)](https://psni.police.uk)

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bicycle, stating the word 'grass', and allowing farm animals to be noisy, amongst others.²² Housing Rights does not believe that a sufficient rationale has been provided to justify the proposed changes, particularly given CJINI's assessment that the current system is proportionate.

The consultation document does not provide any significant evidence that convinces Housing Rights of the need to lower thresholds, with the exception of the specific removal of, 'not of the same household as himself,' from the definition of ASB, which we will address below. Rather, the main justification for proposing to change the law in this area appears to be in response to landlord demands and as a solution to capacity issues. Housing Rights would suggest that this would be more suitably addressed through capacity building rather than through punitive legislative reform.

4.2. Change of Definition of ASB and the lowering of the threshold

The proposal to remove, 'not of the same household as himself,' from the definition of ASB is, in Housing Rights' view, reasonable and appropriate. It is Housing Rights' belief that ASB, especially that which could be considered domestic abuse should be dealt with as swiftly as possible, and we appreciate that broadening the definition here would aid that process.

Outside the specific instance referenced above, our opposition to the widening of the definition of ASB and subsequent lowering of the threshold is not just rooted in the lack of an evidence-base. The consultation states that the proposals will, '*give greater scope to the relevant authorities to handle instances of housing specific anti-social behaviour.*' Yet the Departments have not provided any rationale or examples of the types of behaviour that they hope to address through the lowering of the threshold to mirror the Civil Injunction in England and Wales, that are not within the scope of the current threshold. The failure to provide a proper explanation of the Departments' rationale for this change will make a Court's ability to decipher the legislative intent much more difficult.

In the absence of such rationale or examples of behaviours the Department envisage being addressed within the lower threshold, the Departments' ability to justify the proposals outlined is severely compromised. If the Departments' cannot clearly communicate their intentions here, they cannot reasonably expect a Court, a relevant body or a member of the public to interpret them. This goes to the heart of compliance with the fundamental rule of law, one of the core principles of which is legal certainty. The rule of law ensures the clarity, stability, and predictability of laws, enabling individuals and businesses to understand their rights and obligations, fostering trust in the legal system.²³ Legal certainty requires that the law must be clear and publicly accessible so that citizens can easily find out about their rights and obligations.²⁴ The law should be certain, so that it can be easily enforced and so that people can know where they stand.²⁵ The current proposals will not provide legal certainty and the unacceptable level of subjectivity within the proposed definition of what constitutes ASB will fundamentally undermine this core element of the rule of law.

Also, in relation to behaviours, Housing Rights has particular concerns around what the lowering of the threshold could mean for people who are already homeless, particularly those who are rough sleepers or who are engaged in street begging. We would ask confirmation from the Departments

²² [House of Commons - Home Affairs - Written Evidence \(parliament.uk\)](https://www.parliament.uk/written-evidence/2023-03-29/111011)

²³ [Legal Principles: Types, Examples & Basics | StudySmarter](https://www.study-smarter.com/legal-principles/types-examples-basics/)

²⁴ [What is the rule of law? | The Constitution Unit - UCL – University College London](https://www.ucl.ac.uk/constitution-unit/what-is-the-rule-of-law/)

²⁵ [speech_111011.pdf \(supremecourt.uk\)](https://www.supremecourt.uk/speech-111011.pdf)

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that the lowering of the legislative and definition thresholds will not be used to impose ASBOs on rough sleepers or beggars.

In Northern Ireland, it remains a criminal offence to sleep rough or to beg under the Vagrancy Act 1824²⁶ and the Vagrancy (Ireland) Act 1847,²⁷ Housing Rights understands that it is the practice of the PSNI not to enforce these provisions. We would seek clarity that that this would remain the accepted practice and that clear public guidance emphasising this is developed in consultation with advocacy organisations and people directly affected by these proposals.

Housing Rights is concerned about the potential for the current proposals to be used against vulnerable people who require protection. In England the Vagrancy Act is in the process of being repealed and its replacement, the Criminal Justice Bill²⁸ is currently at Report Stage in the House of Commons. This Bill makes provision for the issuing of BCOs for, '*nuisance begging*,' and, '*nuisance rough sleeping*,' with the potential for custodial sentences for breach of these orders. Housing Rights is fundamentally opposed to punitive measures being used against vulnerable people who are homeless. We also take issue with the definition, particularly the use of the word, 'nuisance'. The inclusion of 'nuisance' in the legal definition has the potential to be used against certain groups whom society is intolerant of and in law is a nebulous and subjective concept that fails to communicate clarity of policy intent and can be interpreted in many different ways.

Given the that Departments' intent appears to be aligning with English Law on this issue, and the similarities between the definitions outlined in the Criminal Justice Bill and these proposals on ASBOs, we would request the Departments to confirm that ASBOs will not be used under the circumstances outlined to target homeless people.

4.3. Standard of Proof and Blurring of Civil and Criminal Law

Housing Rights has significant questions on the proposal to lower the standard of proof required for the imposition of an ASBO.

Firstly, the application of two different burdens of proof in the same process is extremely confusing for those who receive the orders. This confusion is unlikely to improve outcomes for those who are ordered to desist from carrying out ASB.

Secondly, it is incongruous to apply a different standard of proof to the imposition of an ASBO than the standard used to determine a breach of an ASBO. The higher burden of proof was attached to the imposition of an ASBO for a specific reason. Rather than, as the consultation characterises, ASBOs being designed to protect the perpetrator from the criminal justice system, they instead, '*bring their subjects, literally, a mis-placed step away from the criminal justice system.*'²⁹

Previous evidence referenced suggests that ASBOs are often drawn up in such a way as to make their breach inevitable, an assertion highlighted by former UN Commissioner for Human Rights Mr. Gil-Robles.³⁰ He evidences this by pointing out that, up to December 2003, 42% of all ASBOs were

²⁶ [Vagrancy Act 1824 \(legislation.gov.uk\)](https://legislation.gov.uk)

²⁷ [Vagrancy \(Ireland\) Act, 1847 \(irishstatutebook.ie\)](https://irishstatutebook.ie)

²⁸ [Criminal Justice Bill \(parliament.uk\)](https://parliament.uk)

²⁹ [Alvaro Gil-Robles, Commissioner for Human Rights on his visit to the United Kingdom](#)

³⁰ *ibid*

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breached and 55% of those breaches were punished by custodial sentence. His report included a stark warning against the use of the civil standard in relation to the imposition of ASBOs,

“It seems to me that detention following the breach of an ASBO drawn up in such a way as to make its breach almost inevitable (such as not entering a demarcated zone near one’s residence), and which was applied on the basis of hearsay evidence in respect of non-criminal behaviour, would almost certainly constitute a violation of article 5 of the ECHR. Such cases would appear to occur and, in so far as they do, the functioning of ASBOs needs to be addressed.”

This evidence completely refutes the assertion that ASBOs serve as a protective measure against interaction with the criminal justice system and demonstrates that they actually serve as a funnel into it. In some cases, people may be imprisoned having never committed a criminal act. The fact that breach of an ASBO is a criminal offence should mean that the current criminal burden of proof for the imposition of an ASBO is retained in law, and any dilution of this position is in serious danger of further blurring the distinction between the civil and criminal law.

4.4. Positive Requirements

Housing Rights laid out our views on Positive Requirements in section 3.1 of this response and refer to there. We do not believe that the proposals are adequate, sufficient, or coherent. We also do not believe it to be realistic that sufficient resources or adequate provision will be made available to enable positive requirement programmes to be effective.

As outlined above, we recommended that a comprehensive EQIA of these proposals is carried out without delay. We also request detailed information on cost, guidance outlining the parameters of use and information on the operationalisation, including guarantees of the delivery of professional and effective service.

In the absence of this vital information, Housing Rights cannot support these proposals.

4.5 Adding Housing Associations to the list of ‘Relevant Authorities.’

The corollary of Housing Rights’ reasoning for opposing the lowering of the ASBO threshold is our opposition to adding Housing Associations to the list of relevant authorities.

Housing Rights understands why Housing Associations would wish to be added to the list of relevant authorities. Being landlords themselves, it is understandable that they would wish to have greater control over ASB in, or in the vicinity of, their properties in order to protect potential victims of ASB.

However, the criticisms outlined above in relation to the lowering of the threshold of ASB and its potential adverse impacts, in our view outweigh the argument put forward in the consultation document around time and resource restraints. Housing Rights does not believe that making the imposition of ASBOs easier would be beneficial to society and housing as a whole, and opposes measures that seek to achieve this.

Another pertinent issue is that the current relevant authorities, namely the PSNI, District Councils and NIHE are all Public Authorities, and therefore accountable to the public. Housing Associations are independent charities which are accountable to their own Boards and internal governance procedures. While we do not wish to suggest that Housing Associations would abuse such powers,

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indeed we are firmly of the opinion that they would not, but the seriousness of the consequences of these proposals for individuals are such that robust public accountability measures must be in place to ensure sufficient protection for individuals. Housing Rights does not believe that there are sufficient accountability structures proposed in the current consultation for this to be considered an acceptable proposal, and the consultation provides no consideration of this issue, nor does it offer any accountability guarantees. We therefore urge caution around the proposal to add registered Housing Associations to the list of relevant authorities and believe the current process by which Housing Associations can apply to a relevant authority to issue an ASBO on their behalf³¹ is sufficient.

4.6. The Northern Ireland Context

Throughout the entirety of the equality screening document and consultation document is a lack of acknowledgement around the specific Northern Ireland context of ASB, and the dangers attached with being implicated in such behaviour.

Despite being over a quarter of a century removed from the Good Friday Agreement 1998, Northern Ireland, particularly working-class communities are still plagued by the shadow of non-state forces. In their research report, *'Legacies of Wartime Order: Punishment Attacks and Social Control in Northern Ireland,'* Rikard and Bakke acknowledge that paramilitaries continue to carry out punishment attacks within their own communities. This is backed up by PSNI statistics³² detailing the prevalence of such attacks in Northern Ireland. It is likely too, that these statistics do not portray the full picture and incidents of attacks are under-reported. In his book, *'Who Was Responsible for the Troubles: The Northern Ireland Conflict,'*³³ Liam Kennedy, Professor of History at Queens University Belfast, details how only the most severe vigilante attacks are reported, as some victims are fearful of co-operating with police. Kennedy also highlights that it is likely that the most frequent instances of intimidation and threats of physical violence leave no trace on official records.

The concentration of punishment attacks by non-state actors in working class communities presents particular problems when considered alongside ASBOs. The Home Office does not publish data relating to Orders centrally, and numerous reports referenced in this response criticise significant gaps in data capture. It is subsequently difficult to determine the exact relationship between Orders and the working class. However, some analysis does exist. DP Gregg, in an article for the *Centre for Crime and Justice Studies*,³⁴ explains the ineffectiveness of ASBOs and demonstrates how the Orders have been used to disproportionately target people in working class communities, and particularly the homeless and families with mental ill-health and disabilities.

In a Northern Ireland context, where working class communities continue to live in the presence of non-state forces who engage in, 'punishment,' attacks, the lowering of the threshold and the potential to create more orders presents a very real danger to those who have an order imposed on them. It is well known that non-state forces typically target, *'young men, whom paramilitaries accuse of criminal or anti-social behaviour.'*³⁵ Making an ASBO easier to obtain through the lowering of thresholds and widening of definitions is unlikely to be understood by non-state actors who

³¹ [The Anti-social Behaviour \(Northern Ireland\) Order 2004 \(legislation.gov.uk\)](https://legislation.gov.uk)

³² [Security Situation Statistics to January 2024 \(psni.police.uk\)](https://psni.police.uk)

³³ Kennedy, L *'Who Was Responsible for the Troubles: The Northern Ireland Conflict'* 2020, Chapters 3&4

³⁴ [The ASBO Jihad: a twenty-first century witch hunt | Centre for Crime and Justice Studies](https://www.ccrj.ac.uk)

³⁵ [Legacies of Wartime Order: Punishment Attacks and Social Control in Northern Ireland \(tandfonline.com\)](https://www.tandfonline.com)

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specifically target perpetrators of ASB. Not only do these proposals significantly undermine the rights of people to due process and run the risk of increasing damaging contact with the criminal justice system and homelessness, but they may also pose serious and genuine risks to safety. To further lower thresholds, impose more orders and thereby attach the stigma of ASB runs the serious risk of making those who receive orders easily identifiable by paramilitary organisations. This presents unacceptably high risks to safety and life, contrary to Article 2 of the European Convention on Human Rights.

5.0. Injunctions Against Anti-Social Behaviour in Northern Ireland

5.1. Threshold for granting an injunction

Housing Rights' position on the reduction of the threshold for granting an injunction is similar to that as outlined in sections 4.1 and 4.2 of this response.

Similarly to the proposal to reduce the threshold for an ASBO, the consultation document lacks information and evidence which demonstrates why the proposed reform is necessary.

The consultation document does not provide any evidence that convinces Housing Rights of the need to lower the threshold in respect of granting an injunction against ASB. Indeed, there is no empirical evidence presented at all to support the need for this proposal.

Again, the Departments have failed to provide any rationale or examples of behaviours that they intend to be addressed under a lower threshold that are not currently captured by the current threshold. Housing Rights reiterates its concerns that if the Departments cannot clearly communicate the intention of their proposals, it is likely to make the court, practitioners, and the public's ability to interpret that intention extremely difficult and may result in wholly disproportionate injunctions. This will result in a lack of compliance with the fundamental rule of law, and in particular the core concept of legal certainty as outlined above.

The Departments' primary justification again, appears to be to align the law with that in England and Wales. Housing Rights does not consider this a valid argument upon which to embark on legislative reform, particularly in light of the entirely different context in Northern Ireland with regard to ASB as detailed above. Throughout this response, we have emphasised a lack of evidence from England and Wales that ASBOs and injunctions are effective in curbing ASB, including outlining the high rates of breaches.

It is Housing Rights' opinion that the arguments proffered in the consultation document and total lack of an evidence base for these proposals fall far short of sufficient justification for progressing legislative reform of this nature. Without empirical evidence demonstrating either the need for or effectiveness of this proposal, Housing Rights cannot support this.

5.2. Power of arrest for breach of injunction

Housing Rights acknowledges that a power of arrest may act as both a deterrent and a fast means of ending ASB in urgent circumstances. We can see, for example, how this power may be used to swiftly end ASB which amounts to domestic abuse. However, in these most serious cases of ASB such as

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assault or vandalism, the criminal law provides powers of arrest for the PSNI and due process for perpetrators.³⁶

While we can see the value behind this proposal in certain, specific circumstances, again there is no empirical evidence or rationale presented either on the effectiveness of this power, or examples of the behaviour the Departments believe the proposal can effectively end.

Housing Rights' retains its concerns around ASBOs, injunctions and by extension a power of arrest, which may be used disproportionately against vulnerable people and at-risk groups, all of which have been detailed in this response.

In the absence of a compelling justification for this proposal, Housing Rights again opposes this proposal.

5.3. Power of exclusion from home

Housing Rights has demonstrated throughout this response how homelessness leads to increased chances of engaging in criminal³⁷ and ASB.³⁸ The impact of this proposal would be to make a person temporarily homeless. If this person has already demonstrated anti-social tendencies for whatever reason, Housing Rights submits that excluding them from their home will likely exacerbate the chance of further ASB or displace that ASB.

Indeed, the Departments provide no evidence that this proposal would reduce ASB or indeed tackle the root causes. The Departments do state that, *'Social landlords in Northern Ireland feel that the facility to include exclusion powers in injunctions against anti-social behaviour could help to ensure the wellbeing and safety of tenants who have been threatened with violence.'*

It may be that there is a strong case to be made here, but the Departments have failed to make that case in the consultation document or demonstrate clear links between remaining in the accommodation and ASB.

There are however clear links between homelessness and ASB and/or crime.³⁷ While homeless, 15% of 16-25 year olds took part in illegal activity to gain somewhere to stay. 21% felt pressured to commit a crime. 6% committed a crime with the express intention of being arrested just so they would have somewhere to sleep that night. Housing Rights argues making someone homeless only risks escalating such behaviour, rather than ending it.

Housing Rights must again oppose this proposal, on the basis of no convincing evidence of its effectiveness, its only justification being a statement on what landlords may find helpful, and the demonstrated links between homelessness and ASB.

5.4. Positive Requirements

Housing Rights refers to our previous comments above on Positive Requirements.

6.0. Absolute Grounds for Possession in Northern Ireland

³⁶ [Domestic Violence, Crime and Victims Act 2004 - Explanatory Notes \(legislation.gov.uk\)](#)

³⁷ [NI Audit Office Report - Reducing Adult Reoffending in NI](#)

³⁸ [Modern-day 'ASBOs' highly discriminatory and fail to protect victims according to report from JUSTICE - JUSTICE](#)

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6.1. Lack of evidence and the links between homelessness and ASB

Housing Rights has already demonstrated clear links between homelessness and ASB and/or crime. Indeed, there are numerous research studies which point to ASB as a consequence of homelessness as much as being the cause. A 2014 Northumbria University study³⁹ demonstrated how ASB had come about as a result of some people, *'turning to drugs and alcohol as a coping mechanism to get them through living on the streets or to cope with hostel environments.'*

Even for those who engaged in the study for whom their ASB had led to them becoming homeless, the research indicated that that this had not helped them to address their ASB. On the contrary, homelessness was likely to further exclude them from society, and push them into committing more anti-social acts. Researcher Adele Irving said, *'Instead of punishing homeless people, which only reinforces these behaviours, policymakers need to give greater attention to the structural and systematic barriers – in the areas of housing, welfare, employment – facing the homeless.'*

All of the proposals contained within the consultation document, in Housing Rights' view, serve only to erect and reinforce the barriers which obstruct people with anti-social tendencies from addressing their behaviour. They risk creating a situation which will drive more people into the criminal justice system, an environment not conducive to addressing the root causes of their behaviour or underlying issues.

We first and foremost oppose the proposal for Absolute Grounds for Possession on the basis that it will expediate the process to make people homeless.

Secondly, the Departments provide no evidence that that this proposal would, or indeed could, be effective. The consultation document does state that,

'The NIHE has found the threat of eviction is an effective tool when dealing with those very serious cases of anti-social behaviour and in practice appears to be the greatest incentive to moderate behaviour. However, this sanction depends on the existence of effective legislation that provides for tenancies to be brought to an end.'

Setting aside the contradictory nature of this statement, the consultation provides no examples or data to support this claim.

Like all of the proposals within the consultation document, there is no empirical evidence presented which demonstrates that the expedition of possession cases would curb ASB.

There are, however, demonstrable links between homelessness and offending in both the spheres of ASB and criminality. This evidence is both compelling and significant. If the policy intent of this set of proposals is to reduce ASB, Housing Rights submits that including powers for Absolute Grounds for Possession will instead serve to increase ASB. While the proposals may result in ASB being displaced, it is Housing Rights' opinion that this is neither an effective or sustainable position.

Having established clear links between homelessness and ASB as reasoning for opposing this measure, Housing Rights will address the other impacts of this proposal.

6.2. Access To Justice and Proportionality

³⁹ [Anti-social behaviour a consequence, rather than a cause of homelessness \(northumbria.ac.uk\)](https://www.northumbria.ac.uk/anti-social-behaviour-a-consequence-rather-than-a-cause-of-homelessness)

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It is Housing Rights' opinion that there already exists effective legislation that provides for tenancies to be brought to an end, one which takes account of and sufficiently balances evidence, and which most importantly provides access to justice for defendants.

A court in Northern Ireland can make a possession order if one or more of the grounds listed in the Housing (Northern Ireland) Order 1983⁴⁰ are satisfied. Where the ground relied upon is ground 2, as would be the case under these proposals, then the court can make a possession order if it considers that it is reasonable to do so (Articles 29(2)(a) and 29(3)(a)).

When deciding whether an order for possession is reasonable, the court shall have regard to the following matters (pursuant to Article 29(3ZA) of the 1983 Order):

- (i) the effect that the nuisance has had on other persons,
- (ii) any continuing effect such nuisance is likely to have,
- (iii) the effect that the nuisance is likely to have if it is repeated,
- (iv) the circumstances of the tenant and the likely effect of a possession order on the tenant and any person residing with them.

Importantly, however, these factors are not exhaustive, and the court retains a discretion to take all relevant matters into account in making its decision as to reasonableness.

Section 6(1) of the Human Rights Act 1998⁴¹ imposes a prohibition on public authorities from acting incompatibly with a Convention right. That proceedings by a public authority for a possession of a person's home engages that person's Article 8 rights was established by the European Court of Human Rights in *McCann v UK* (2008) 47 EHRR 40 ('the loss of one's home is a most extreme form of interference with the right to respect for the home', and *Kay v UK* 2012 54 EHRR 30) and recognised by the Supreme Court in *Manchester CC v Pinnock* 2010 UKSC 45, [2011] 2 AC 104.

The second limb of Article 8 encompasses the concept of proportionality, whereby it is necessary that any interference with the right be proportionate in order to be lawful. There is a helpful discussion of the concept at paragraphs [68] to [76] of Lord Reed JSC's judgment in *Bank Mellat v HM Treasury (No 2)* 2013 UKSC 39, [2014] AC 700; proportionality, *'involves a value judgement at the stage at which a balance has to be struck between the importance of the objective pursued and the value of the right to be intruded upon.'*

As it is clear that Article 8 of the ECHR is engaged when possession is sought by a public authority, it follows that a court must be satisfied that the requirements of proportionality are satisfied before granting possession.

It is Housing Rights' opinion that the current process for seeking a possession order is sufficient and allows for a court to fully take account of the evidence presented in respect of the grounds, consider the matters outlined above and weigh this against the proportionality of making the defendant homeless. This approach guarantees access to justice for the person accused of committing ASB and provides for a proportionate response. It also provides the authority seeking the possession order opportunity to present their arguments and evidence. If their arguments are sufficient, the Court will issue a possession order.

⁴⁰ [The Housing \(Northern Ireland\) Order 1983 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁴¹ [Human Rights Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk)

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The reason why some of these cases are protracted is because they are complex and deeply impactful, they should therefore be given the time that allows for full consideration of all evidence and facts. Any attempt to expedite this process to one, short sitting risks running roughshod over the principles of access to justice and proportionality.

It is also the experience of Housing Rights that Civil Courts are often unfamiliar with the process in Article 29 and are unaware of the impact of making a Possession Order. Having been served with a Possession Order, an individual is almost guaranteed to be deemed intentionally homeless or not suited to be a tenant. This greatly increases the chances of the person becoming homeless long term.

6.3. Interactions with lowering of thresholds

Housing Rights has already laid out our opposition to the lowering of thresholds throughout this consultation response. However, the interaction between the lowering of thresholds in respect of the proposals around ASBOs and injunctions against ASB, and Absolute Grounds for Possession has the potential to have dire consequences for some of our most vulnerable people.

We have demonstrated above examples of ASBOs being issued and written in such a way as to make breaches inevitable in England and Wales.

The proposals in relation to ASBOs and injunctions increase the chances of similar bad orders being issued if the law were to change in Northern Ireland in line with the current proposals, especially given that the Departments have failed to provide any rationale or examples for the courts to interpret. Evidence shows that these orders are written in a way which make the chances of a breach extremely high.⁴²

Housing Rights has serious concerns that the adoption of Absolute Grounds for Possession in interaction with the other proposals outlined, sets an unacceptably low threshold for the process to make a person homeless. These concerns are especially acute when taken in respect of the vulnerable persons outlined such as those suffering with addictions or mental ill-health, who will be disproportionately impacted by these proposals.

Indeed, if thresholds for ASBOs are to be lowered allowing them to more easily be served, and breach of an ASBO is to be considered Grounds for Absolute Possession, Housing Rights would expect that in a compassionate society the Departments with responsibility for law, justice, community support and housing, would wish to make access to justice as robust as possible. This proposal is the opposite of that.

Housing Rights firmly opposes the proposal for Absolute Grounds for Possession.

7.0. Conclusion

Housing Rights is extremely disappointed to have had to respond to a set of proposals in such a manner. The decision to do so was not taken lightly, but we unfortunately feel that the inadequacy of these proposals have left us with no choice.

⁴² [The ASBO Jihad: a twenty-first century witch hunt | Centre for Crime and Justice Studies](#)

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We are particularly disappointed that the Departments have decided that the carrying out of a thorough EQIA was not necessary and have laid out our reasoning extensively in section 3 of this response. The failure to do so, in Housing Rights' opinion, is a breach of the Departments' statutory obligations under section 75 of the Northern Ireland Act 1998.

The lack of an EQIA, in Housing Rights' view has also directly led to a set of proposals that are poorly informed, possess inadequate mitigations, provide no empirical evidence to demonstrate that they are necessary or would be effective, offer no attempt to tackle the root causes of ASB, erode access to due process and will ultimately cause more harm than good.

The Departments characterise these reforms as a protection against interaction with the criminal justice system. Yet the very nature of ASBOs and the ways in which they are written, in combination with the policy choices within these proposals will demonstrably lead to more people coming into contact with the criminal justice system, being made homeless, and risk falling into a cycle of destructive behaviour.

In the broadest terms, Housing Rights has not seen convincing evidence that ASBOs are actually a successful or effective means of addressing ASB. Indeed, the vast majority of evidence would suggest that they do not, and actually risk increasing chances of ASB and disproportionately target the most vulnerable in society. It is Housing Rights' opinion that ASBOs are not and have never been effective, but instead are a knee-jerk and blunt reaction to complex issues which require careful consideration and compassionate policy design to address.

Particularly concerning, given the sheer amount of evidence linking homelessness with anti-social behaviour, is the policy intent to make it easier to make people homeless.

Housing Rights finds it unacceptable therefore, that the Departments have not established the need for these proposals and provided no evidence or rationale for progressing with them. The extent of justification for them appears to be to align with England or Wales, or respond to landlord concerns which are vague in nature and not clearly extrapolated upon.

The Departments have objectively failed to provide any clear links between these proposals and reducing ASB.

Where there are clear links, however, is the link between having access to safe, sustainable accommodation and reducing offending and ASB. Any attempt, and we consider these proposals to be such an attempt, to weaken access to accommodation as a means of reducing ASB, flies in the face of all contemporary, robust evidence which demonstrate its futility.

The fight against ASB requires careful consideration of contributing factors, including accommodation, poverty, mental health, addictions, specific cultural influences and more. The solution must therefore be multidisciplinary and complex, but above all compassionate.

This is not evidenced within the consultation document. The proposals outlined are a blunt instrument, punitive and punishing with no prospect of successfully curbing the issue it seeks to address. For all the reasons outlined, Housing Rights consider these proposals unfit to proceed.

Consultation response - proposals to amend the legislation to help tackle anti-social behaviour.

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For more information on this policy response, please contact Housing Rights' Policy Coordinator at stephen.morrison@housingrights.org.uk.

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