



**Submission to the Department of Housing, Local Government and Heritage**

**Consultation on Proposed Amendments to the Homelessness Related Aspects of the Housing Act  
1988**

**October 2023**

**For further information**

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**1. Introduction**

Pavee Point became aware of the current consultation on proposed amendments to the Housing Act 1988 through our engagement with members of the National Homeless Action Committee (NHAC). We appreciate the opportunity to provide our feedback, however, we believe that an extension of the one-week consultation timeframe may be needed to allow all relevant stakeholders the opportunity to input into this process.

The current consultation is based on the Department's brief note rather than the full review completed by the Homelessness Unit in conjunction with nominated representatives from the CCMA. It would be useful for a wider consultation to have further details of the review in order to comment effectively on the proposed changes to the legislation.

This submission provides some context in terms of Traveller and Roma accommodation and experiences of homelessness, as well as providing feedback on some of the key proposed amendments outlined in the Department's note. Pavee Point primarily seeks to register our deep concern about the exclusionary and potentially discriminatory nature of the proposed amendments to the Housing Act, which would undoubtedly have a disproportionate impact on the Roma community, as well as other marginalised groups.

**2. Context: Traveller and Roma homelessness**

There are approximately 11,680 Traveller families living across the country. 65% rely on local authorities for accommodation; 16% in private rented; 7.5% own their accommodation and 11% are reported as homeless; either living on the side of the road or doubling/trebling up on already overcrowded sites<sup>1</sup>. However, research suggests that these figures are a conservative estimate, with 39% of Travellers meeting the European definition of homelessness (European Typology of Homelessness and housing exclusion-ETHOS), including those in emergency accommodation and the

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<sup>1</sup> Department of Housing, Local Government and Heritage (2022) 2021 Estimate – All Categories of Traveller Accommodation. Dublin: Department of Housing, Local Government and Heritage.

large number of Travellers who experiencing 'hidden homelessness' in overcrowded living conditions. This is compared to 6% of the general population.

There are a number of pathways, factors and reasons for the disproportionate number of Travellers experiencing homelessness. Research to date and the work of Pavee Point has highlighted and indicated the impacts of racism and discrimination, site evictions, lack of culturally appropriate accommodation and lack of accommodation for larger family sizes as some of the factors. Travellers are ten times as likely to report discrimination in access to housing as the general population, even after education and employment status are held constant. The overwhelming majority of landlords (82%) would not rent to Travellers. The Fundamental Rights Agency found that Irish Travellers had one of the highest rates of reported discrimination (73%) when trying to rent or buy housing over the previous 5 years.

According to the Census 2022<sup>2</sup>, there are approximately 16,000 Roma living in Ireland. Most Roma live in private rented accommodation, while 13% live in social housing<sup>3</sup>. Roma face discrimination in accessing accommodation; severe overcrowding, poor living conditions, a lack of security of tenure, homelessness, and barriers accessing social housing and housing assistance payments. 46% of Roma in Ireland reported experiencing homelessness at some stage in their lives. It is understood that this figure would be significantly higher, if those living in hidden homeless situations (e.g.) with family and friends in overcrowded conditions, were also included<sup>4</sup>.

The unprecedented nature of the worsening housing and homeless crisis in Ireland presents the backdrop to the current accommodation situation for Travellers and Roma. Travellers and Roma are significantly marginalised in terms of access to adequate, safe, and culturally appropriate accommodation and related supports<sup>5</sup>. Furthermore, similar to the general population, Roma and Travellers have been subject to eviction from private rented accommodation which is often due to the lack of security of tenure for many renters in Ireland. For Roma, applying for social housing is a lengthy and difficult process, with the digital divide and lack of language supports forming significant barriers.

### **3. Review of the Housing Act 1988**

#### **3.1. Definition of Homelessness/At Risk of Homelessness**

The Department proposes to bring forward amendments to the Housing Act which provide a definition for 'at risk of homelessness', as well as introduce preventative measures that the Housing Authorities 'may take' to assist those at risk of homelessness. This may be a welcome change to the legislation; however, it is important that a broad and holistic understanding of 'at risk of homelessness' is included.

The European Commission has urged Member States to adopt the European Typology of Homelessness and Housing Exclusion (ETHOS) definition of homelessness to ensure a common European wide understanding of the term<sup>6</sup>. The ETHOS encompasses both homelessness and housing exclusion as they are intrinsically linked. The ETHOS is a comprehensive framework that captures the complexity of homelessness and includes: rooflessness, houselessness, living in insecure

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<sup>2</sup> [Census 2022](#)

<sup>3</sup> Pavee Point and Dept Justice (2018) Roma in Ireland. A national needs assessment

<sup>4</sup> Pavee Point and Dept Justice (2018) Roma in Ireland. A national needs assessment

<sup>5</sup> Russell, H., Privalko, I., McGinnity, F. and Enright, S. (2021) Monitoring Adequate Housing in Ireland. Dublin: Economic and Social Research Institute and the Irish Human Rights and Equality Commission

<sup>6</sup> Baptista, I. and Marlier (2019) Fighting homelessness and housing exclusion in Europe: A study of national policies. Brussels: European Commission

accommodation, and living in inadequate accommodation, as such, it includes the following categories of people who are:

1. Sleeping rough
2. In emergency accommodation, such as overnight shelters
3. In accommodation for the homeless (hostels, shelters, refuges, transitional)
4. In institutions with no housing to which to go subsequently (release from prisons, medical institutions)
5. Forced to live in temporary structures (including mobile homes/trailers), due to lack of housing and/or appropriate provision of accommodation
6. Forced to live with family or friends due to lack of housing, not own residence ('couch-surfing')

The ETHOS system has been accepted as the standard tool of definition and measurement across almost all European countries (and outside the EU14), including by the Irish government and was the instrument endorsed in the government homeless policy *The Way Home*<sup>7</sup>. Pavee Point has consistently used the ETHOS definition of homelessness to demonstrate that Travellers and Roma constitute a large number of the 'hidden homeless' population in Ireland as they are forced to double/treble up with family members in already severely overcrowded<sup>8</sup> situations.

For prevention measures to be implemented effectively, the focus of the legislation must be on the state's obligations to support those at risk of homelessness. We would suggest removing the word 'may' and replace with 'shall', as well as outlining key actions that Local Authorities must take to assist those at risk of homelessness.

### **3.2. Introduction of Eligibility Criteria for Emergency Accommodation**

The Department's note proposes the introduction of eligibility criteria, requiring habitual residency as a condition for access to section 10 funded emergency accommodation. This is a potentially discriminatory amendment to the legislation, which would have a disproportionate impact on a significant numbers of Roma families. While noting that it is not the topic of this consultation, we understand that this change will also impact eligibility for Social Housing Support which has the potential to further exacerbate difficulties for Roma.

Concerns about the discriminatory impact of the Habitual Residence Condition on Roma access to basic social protections has been widely documented by Pavee Point, along with IHREC, and a number of international human rights bodies<sup>9</sup>. Roma who report being unsuccessful in their applications for social welfare have on average lived in Ireland 8 years and cited issues such as a lack of documentation on tenancy and employment history, inability to negotiate an unfamiliar system, and language and literacy barriers as key obstacles in this regard. 84.4% of Roma also reported feeling discriminated against in getting social welfare, regardless of the success of their application<sup>10</sup>.

Under the Public Sector Equality and Human Rights Duty, all public bodies in Ireland have a legal obligation to promote equality, prevent discrimination and protect the human rights of everyone affected by their policies and practices. Based on this legal obligation, we have called on the State to

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<sup>7</sup> Department of Environment, Heritage and Local Government (2008) *The way home - strategy to address adult homelessness in Ireland, 2008- 2013*. Dublin: Department of Environment, Heritage and Local Government.

<sup>8</sup> Pavee Point Traveller Roma Centre (2018) *Civil society monitoring report on implementation of the national Roma integration strategies in Ireland*. Brussels: European Commission

<sup>9</sup> UNGA, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, A/HRC/20/25, 2012, para 102; European Commission against Racism and Intolerance, ECRI Report on Ireland Fourth Monitoring Cycle, CRI (2013)1, 2013, para 130; UNCEDAW, 2017; UNCRC, 2016; HRC, 2014; UNCESCR, 2015

<sup>10</sup> Pavee Point & Department of Justice (2018) *Roma in Ireland. A national needs assessment*

conduct an equality review of the impacts of the HRC on the Roma community and their exclusion from social protection and employment supports. If this regulatory barrier was further applied to all emergency homeless accommodation, we would see the Roma community further marginalised, facing a desperate humanitarian crisis.

Ireland has committed to Roma inclusion in our National Traveller and Roma Inclusion Strategy<sup>11</sup>, which is linked to the State's commitments at a European level to the EU Roma Strategic Framework<sup>12</sup>. The Department of Housing, Local Government and Heritage is currently in a process of developing Traveller and Roma accommodation actions with the Strategy's lead Department (DCEDIY) and this proposed amendment could not only potentially further exacerbate Roma exclusion but also undermine the State's international human rights obligations on which Ireland is periodically reviewed on its progress.

The reasons given in the Department's note for reviewing the homelessness provisions in the Housing Act are listed as the rising homeless figures, the changing demographics (with a particular focus on EEA migrants), and the lack of clear housing pathways for some people living in emergency accommodation. The focus should not be on changing the eligibility for homeless supports, which will exclude some of those most in need, but rather the Department must tackle the underlying causes of homelessness and the difficulties progressing out of homeless services – namely the lack of affordable and social housing provision, the over reliance on the private rented market, the lack of security of tenure for renters, difficulties accessing social housing supports, and lack of access to housing support officers and interpretation services.

### **3.3. New Policy Requirements**

The Department's note acknowledges that the proposed amendments will result in some cohorts no longer being entitled to emergency accommodation and that a system will need to be in place to ensure humanitarian assistance/ensuring no person is left without shelter. However, it is deeply concerning, that it is proposed that this will be dealt with as a matter of policy rather than legislation. It is vitally important that the discretionary powers of the Department and Local Authorities are enshrined in law.

Without clearly defined entitlements for all those who are in the State needing shelter, it is possible that a two tier, inequitable system will develop, and that some of the most marginalised will be pushed outside of the system entirely.

It is welcome that housing authorities will be obliged by law to consider the best interests of the child within this legislation, however, we know that many of those who will be excluded from emergency homeless supports will be families with children. It is unclear how their best interests will be considered within these proposed changes and if their needs will take precedence.

### **3.4. Matters for Secondary Legislation**

**Withdrawal of Services:** The note also proposes changes to secondary legislation, with regards to regulations for the provision of supports to homeless households. One proposed amendment is clarity on criteria for housing authorities to withdraw emergency accommodation where an individual poses a danger to services users. Pavee Point would advocate that any proposed regulations would need to be put out to consultation before enactment to ensure that key stakeholders can contribute. Given Traveller and Roma experiences of racism and discrimination, it

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<sup>11</sup> Department of Justice (2017) National Traveller and Roma Inclusion Strategy

<sup>12</sup> European Commission (2020) EU Roma Strategic Framework 2020-30

would be important to ensure that regulations could not be used to unfairly exclude racialised or marginalised groups from emergency accommodation, and that there are also clear pathways for those facing exclusion from services, considering the increased pressures this may bring on homeless day services, community organisations (including Traveller organisations), Gardaí, and acute settings.

**Local Connection Criteria:** When considering changes to the local connection criteria, it is important to note that Travellers and Roma can already face difficulties establishing their local connection and which Local Authority will conduct their housing (and prior to that their homeless) assessment. It is often the person's place of employment that determines this, which can negatively impact Roma, as their place of work can change more regularly due to working for agencies/in precarious employment. Travellers are also more likely to move between counties, due to staying with family and friends, or being moved from where they are living on the roadside.

The current process for identifying local connection for the purposes of Social Housing Support, which is often applied in an even more restrictive manner by local authorities to families presenting as homeless or at risk of homelessness, is not interactive and is based on a prescribed form that only allows one entry as regards local connection<sup>13</sup>. As a result, other indications such as school placement can be easily missed, and this can lead to housing applications being returned and a new application required. This has unfortunately happened to some families on multiple occasions due to the rigidity of the administrative process. In some cases, families who are in emergency homeless accommodation have found their placements under threat, where no Local Authority has taken ownership of their case. It is important that any amendments to the legislation do not create further difficulties/barriers for families accessing homelessness prevention, homeless services and ultimately housing supports.

**Pavee Point Asks the Department to:**

- Introduce a broad and holistic understanding of 'at risk of homelessness' based on the European ETHOS definition of homelessness and ensure that the State's obligations to support those at risk of homelessness is enshrined in law.
- Based on the State's legal obligations under the Public Sector Duty and International Human Rights law, reconsider the introduction of eligibility criteria, requiring habitual residency as a condition for access to section 10 funded emergency, due to the discriminatory impact of this regulatory barrier on the Roma community.
- Ensure that the needs of all people requiring shelter in the State, particularly children, are covered by the Housing Act 1988, rather than excluding some particularly marginalised groups to lesser protections under policy provisions.
- Put any proposed regulations on the withdrawal of homeless services out to consultation before enactment to ensure that key stakeholders can contribute, ensuring regulations could not be used to unfairly exclude racialised or marginalised groups from emergency accommodation.
- Assess any amendments to the local connection criteria to ensure that further barriers are not created for particularly marginalised groups, including Travellers and Roma

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<sup>13</sup> Statutory Instrument 116 of 2021 Schedule (Regulation 4) page 19