

CAJ's submission no. S. 257

**CAJ's Response to Regeneration and
Housing Bill Consultation**

April 2010

What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Consultation Response for Regeneration and Housing Bill

Committee on the Administration of Justice ('CAJ')

1. Summary

Although CAJ welcomes several mechanisms for accountability within the Regeneration and Housing Bill ('the Bill'), it recommends that enhanced accountability be introduced for the councils' powers to provide financial assistance for social need. CAJ recommends that the Bill is clear in giving final responsibility to the Department's Minister, who is accountable to Assembly and so subject to full democratic scrutiny.

CAJ recommends that the Department for Social Development ('the Department') ensures robust and clear mechanisms, for coordination between Assembly departments and councils, are in place before the passing of the Bill. Proper coordination is essential in terms of policy development, delivery, timing and resources.

CAJ recommends that the Department consults on its screening exercise and, if necessary, conducts an EQIA of the Bill. It also requests that the Department fulfils its positive obligation to consider how the Bill could promote the equality of opportunity.

CAJ underlines the need for clarity, in both the consultation and the Bill, when making changes to existing regeneration and housing policy.

2. Introduction

CAJ was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ works on a broad range of human rights issues and its membership is drawn from across the community. Its activities include publishing reports, conducting research,

holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice.

CAJ's areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize. Together with UNISON, we co-convene the Equality Coalition.

For some time CAJ has been involved in the process of furthering the mainstreaming of equality in Northern Ireland and we welcome the opportunity to forward our views on equality related documents. Given the considerable transfer of powers to local councils under the Bill, we are keen to participate fully in this consultation exercise.

3. The Need for Accountability

The Bill, if passed, would transfer considerable competences to local government, including the power to address social need, demolish property, redevelop land and regulate housing conditions. As such, the legislation would involve the transfer of substantial budgets and responsibilities from the Assembly to local councils, which have not previously adjudicated on all such matters.

In parallel with the transfer of such powers and responsibilities is the need for enhanced accountability for the future actions of the councils. This is particularly pertinent, given the historical controversy over some councils' use of their powers relating to housing. While CAJ recognises that councils no longer operate in the political climate of 40 years ago, we are also cognisant that councils have, by their nature, fewer safeguards for neutrality than the Assembly or the Housing Executive.

CAJ welcomes several aspects of the Department's approach to embedding mechanisms for accountability within the Bill. For example, the measures relating to the adoption of development

schemes and actions permissible due to housing unfitness allow for recourse to the Department, Assembly and/or Housing Executive. We also welcome the ability for two representatives from each council to serve on the Housing Council, in order to increase the political representation.

However, CAJ is concerned that some aspects of the Bill do not allow for sufficient oversight by more accountable bodies. In particular, the councils' powers to provide financial assistance for social need (clauses 1 and 2) contain no reporting or approval requirements in relation to the Department (whose Minister is accountable before the Assembly). Given the clear evidence of socio-economic inequalities, on both sides of the political or religious divide, it is crucial that local councils are seen to be held to account in this regard.

CAJ recommends that the Department allows for enhanced accountability mechanisms in relation to the councils' powers to provide financial assistance for social need.

We understand, from the consultation on the Bill, that the Department will retain responsibility for policy and the councils will have responsibility for the delivery of policy. *'The Department will continue to have responsibility for policy in relation to the functions which are transferring.. and councils will have operational responsibility for the vast majority of regeneration activity in their district'* (at para 3).

However, this division of responsibility does not make it clear who has final responsibility for regeneration. In practice, the distinction between policy development and delivery is not always clear. CAJ believes that there is a risk that both the Department and the councils could believe that the other has responsibility for financial assistance in social need. As such, responsibility, and so accountability, could fall in the gap between the Department and the councils.

CAJ recommends that the Bill is clear in giving final responsibility to the Department's Minister, who is accountable to Assembly and so subject to full democratic scrutiny.

4. The Need for Coordination

Given the transfer of considerable powers and responsibilities to local councils, CAJ underlines the need for proper coordination between the Department, the Assembly, the Housing Executive and councils. This need for coordination strikes at many aspects of the Bill.

First, coordination is essential to ensure a coherent and optimal delivery of regeneration and housing policy throughout Northern Ireland. CAJ welcomes some proposals within the Bill to ensure coordination in this regard. For example, empowering the councils to act for the promotion of energy efficiency, with reference to both the Department's and the Assembly's strategies, should allow for a more effective and efficient delivery of policy. In addition, the Bill allows for coordination in relation to development schemes, housing unfitness, rights of way and surveys.

However, the consultation and the Bill are silent on how the Department will coordinate with the Department for Agriculture and Rural Development ('DARD') in relation to its rural regeneration powers, which will also pass to the councils.

Also, there is no mechanism for the councils to coordinate on the regulation of HMOs. For example, each council's interpretation of 'suitability' in relation to both overcrowding and the requirements of s80 Housing (NI) Order 1992 could differ. Similarly, the power given in relation to setting conditions attached to financial assistance for social need (clause 2). "*As they think fit*" is too widely drawn and could differ between the councils. Guidelines for their application would be advisable, particularly given the punitive nature of failure to comply with conditions set.

CAJ recommends that the Department ensures robust and clear mechanisms, for coordination between Assembly departments and councils, are in place before the passing of the Bill.

Secondly, it is important that the timing of each body's powers is coordinated to ensure there is no confusion, duplication or omission of delivery. For example, the consultation proposes the transfer of powers to the councils in 2011, but it is not yet clear that the changes under the Review of Public Administration ('RPA') will take place within the May 2011 deadline. CAJ therefore recommends that the consultation and Bill provide for implementation concurrent to or after the general RPA changes are in place, rather than specifying a concrete, and possibly unrealisable, timeframe.

Also, in relation to specific powers contained within the Bill, the coordinated timing of actions is necessary to ensure legal certainty and fairness. For example, clause 10 allows for a council to enter into an agreement for the disposal or development of land acquired compulsorily before a vesting order has been made. Given that Schedule 6 of the Local Government Act (NI) 1972 ('the 1972 Act') allows for vesting orders to be refused after the publication of the notice specified at its paragraph 2(a), CAJ believes that the timing of a council's powers in clause 10 would be premature.

The ability of a council to enter into contracts before a vesting order is made could affect the rights of the other party to any such contract or the security of tenure of the current owner and/or occupier of the land in question. If so, it could also be detrimental to the council's interests, and so those of the public purse. CAJ recommends that the Bill change the powers of council before acquisition at clause 10 to after the publication of a notice at paragraph 5, as opposed to paragraph 2, of the 1972 Act.

CAJ underlines the importance of well coordinated timing for the transfer of powers in the Bill and also the operation of specific powers contained within the Bill, for the interests of legal certainty and avoidance of waste.

Finally, it is essential that proper coordination allows for the most efficient and constructive use of the devolved budget. This is particularly important in the current economic climate. The consultation and the Bill are silent on the way in which the transfer of budgets will be coordinated (except for the transfer of land, assets and liabilities relating to some development schemes).

Further, the Department should be cognisant of the potential lack of expertise in the councils in relation to many regeneration and housing issues. As such, it is essential that the transfer or recruitment of experienced staff to councils be considered in full to ensure the proper implementation and optimal delivery of the powers and responsibilities transferred to the councils by the Bill. For example, the local councils may not have experience of cultural sensitivities, such as dealing with ethnic minority families in HMOs.

CAJ recommends that a clear, equitable and transparent mechanism for managing the transfer of budgets and human resources from the Department, DARD or Housing Executive to councils, and also between councils, is set out for full consideration.

5. The Equality Duty

As a designated public authority, the Department is under a statutory duty to have due regard to the promotion of equality of opportunity (s75). However, CAJ believes that the consultation on the Bill has not taken proper account of this and its associated obligations.

First, although the screening exercise found evidence that students and migrant workers have different needs, experiences, issues and priorities in relation to houses in multiple occupancy ('HMOs'), the Department declined to undertake an equality impact assessment ('EQIA'). The Department's equality scheme states, at para 3.1, that policies '*will be screened against the four criteria.. and those identified as having significant implications for equality of*

opportunity following such a review will be subject to a full impact assessment.'

The Department seems to have found that an EQIA was not required, as *'[t]he intention is that the statutory HMO registration scheme will transfer to councils in its current form'* (page 7) and the *'functions themselves will continue to be exercised, albeit by a different organisation'* (page 9). However, it is possible that the exercise of the functions will differ from its current approach, given their control by different organisations. For example, the control of HMOs by different councils may create an inconsistency of approach, which could cause difficulties for ethnic minorities and young people (students), especially as both groups tend to have little experience of regulatory mechanisms in Northern Ireland.

Also, the Department has not consulted with either migrant workers or students in reaching its conclusions for the screening of the Bill. This inhibits the Department's ability to conclude with any certainty that the policies of the Bill will not have a significant impact on equality of opportunity. The conclusion is particularly surprising given the Department's assertion that the *'[i]n most cases, prior to putting forward a proposal for legislation, the Department will have carried out an equality impact assessment'* (para 3.12 of the Department's equality scheme).

CAJ recommends that the Department consults on its screening exercise and, if necessary, conducts an EQIA of the Bill.

Secondly, the Department found, in its screening form, that there was no opportunity to better promote the equality of opportunity by altering policy of working with others (at page 9). However, as noted above, the effective coordination between councils in its regulation of HMOs would be very likely to promote the equality of opportunity for both ethnic minorities and young people.

Further, the enhanced accountability of councils' actions in relation to financial assistance for social need could help promote the equality of opportunity regarding political opinion and religious belief. In addition, the Department could have taken the

opportunity to correct the hetero-normative language when amending legislation already in force, such as the references to ‘*husband and wife*’ in s76 Housing (NI) Order 1992, without consideration of civil partners. Similarly, the same section could extend its reference to partners who are not married or in a civil partnership, thus promoting equality regarding sexual orientation and marital status.

Finally, the Department is arguably not fulfilling its duty and potentially frustrating the future promotion of equality of opportunity by stating that it will ‘*continue to promote equality of opportunity regardless of where responsibility for delivery lies*’ (pages 7 and 9). This statement suggests that the Department, as opposed to the councils, will undertake the future responsibilities for s75 in relation to the delivery of the Bill.

However, all designated public authorities have a responsibility to have due regard to the promotion of equality of opportunity in relation to all their functions, from policy development to delivery. In order to discharge this duty, it is not sufficient to make a statement of commitment, but creative thought and concrete proposals are required to put the duty into practice.

Similarly, consultation with local government and community planning powers do not, of themselves, ‘*ensur[e] the continued promotion of equality of opportunity*’ (page 8). It is necessary for the Department, and other designated public authorities, to consider how they might actively promote the equality of opportunity in each and every stage of the exercise of their functions.

CAJ requests that the Department fulfils its positive obligation to consider how the Bill could promote the equality of opportunity.

6. The Need for Clarity

There are aspects of the consultation and the Bill that are not very clear about the changes being proposed, or the reasons why the changes have come about. In the interests of accessible and

transparent law-making, and also constructive participation, CAJ would like to point out this lack of clarity and request further information.

First, the Bill does not make clear reference to the need for a vesting order when land is acquired compulsorily. Although the obligation is on the statute book through Schedule 6 of the 1972 Act, most laypersons would not be aware of this application. CAJ believes that it would greatly aid the accessibility and so equity of the Bill if reference were made to the need for a vesting order or the 1972 Act, as is the case for the corresponding Planning Order (NI) 1991, which applies to the Department.

Secondly, the Bill includes some changes to the current operation of regeneration and housing policy, which are not outlined in the consultation document. For example, the council's possession of premises summarily on termination of tenancy, whatever the rent or term (clause 8(2)), and the power of the council to require information (clause 12), do not appear in the corresponding Planning Order (NI) 1991 (which applies to the Department). Conversely, the need to consider accommodation for those working within the area when disposing of property in a development scheme is absent from the Bill, but is an obligation for the Department (at s90(2) Planning Order (NI) 1991). It would be helpful if the Department could explain the reasons for this inconsistency.

Finally, the Bill repeals some aspects of housing policy, without making clear how the Bill would replace the relevant sections or, alternatively, why those aspects of policy are no longer required. In particular, this is the case in relation to clearance areas and the relevance of external factors for land being unfit for habitation (as set out in Chapter III Housing (NI) Order 1981).

While we note that the consultation and the Bill provides similar powers under development schemes, they do not allow for the two examples provided above. It would be helpful if the Department could explain why it was decided that those policies were no longer

required and the potential impact of their absence upon the overall regeneration and housing policy.

Also, the reasons for a development scheme to be prepared are now limited to '*expediency*' (clause 5 of the Bill and s85 Planning Order (NI) 1991), and exclude explicit consideration of land being '*unfit for human habitation*' (s47 Housing (NI) Order 1981). While the latter may be intended to be implicit in the former, expediency refers to the subjective views of the council or Department, rather than the objective need for the land in question. CAJ suggests that any factors intended to be considered for preparing a development scheme be made explicit in the Bill.

CAJ underlines the need for clarity, in both the consultation and the Bill, when making changes to existing regeneration and housing policy.

Should you require any further information in relation to any of the above, please don't hesitate to contact Debbie Kohner, Equality Programme Officer.

CAJ
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