



**Threshold's Observations on the General Scheme
of Housing (Miscellaneous Provisions) Bill 2024**

April 2024

Introduction

1. Threshold welcomes the invitation to contribute to the Committee as they consider the General Scheme of Housing (Miscellaneous Provisions) Bill 2024.
2. Threshold, the national housing charity, has worked with and supported tenants living in the private rental sector since 1978. Each year, Threshold assists approximately 20,000 households that are experiencing difficulties in their private rental tenancies, with an increasing number facing eviction. As a result, Threshold is suitably placed to identify the manner in which this proposed legislation will impact those in need of social housing supports.
3. Threshold is concerned with a number of aspects in Part 2 of the General Scheme of Housing (Miscellaneous Provisions) Bill 2024, in which proposed amendments to the Housing (Miscellaneous) Provisions Act 2009 are put forward. We understand the intention is to set out how the rights of different nationalities – whether EU/EEA, UK, or non-EEA nationals – when applying for long-term social housing supports.
4. Based on our experience of supporting clients that are applying for social housing supports, we have identified several issues which may cause difficulty in the practical application of the proposed changes. These difficulties could: (a) inadvertently prevent people from rightfully accessing social housing or social housing supports, such as the Housing Assistance Payment; (b) delay their access to such supports when time is of the essence; or crucially, (c) prevent those most in need from accessing emergency accommodation.
5. In setting out these issues, we have included recommendations to overcome potential difficulties and hardships for those in most need of housing.
6. Given the significant and real-world consequences of the proposed changes, as well as the complex legal matters at play, these changes must be given due and careful consideration.
7. In this submission, we will focus on the adoption of the habitual residency condition, the assessment of reckonable residency, potential blocks to accessing emergency accommodation and possible restrictions on making an application.

Habitual Residency Condition

8. It is proposed to adopt the habitual residency condition from the Social Welfare Consolidation Act 2005 (2005 Act) into the Housing (Miscellaneous Provisions) Acts

(as amended). If this amendment is to proceed, it will be necessary to adopt a number of other aspects of the 2005 Act.

9. These include a clear designation as to who will make the determination and how they will make it, as to whether an applicant and their household is habitually resident, as well as a mechanism for appeals, akin to the one in the Social Welfare Consolidation Act 2005.
10. It is set out in the Bill that all members of the applicant household must be habitually resident. This may be problematic for people whose spouse or partner does not meet this condition.

Designated Person

11. In the Social Welfare Consolidation Act 2005 a designated person, who is “*designated by the Minister to perform the functions conferred on a designated person by this Act*”, determines whether a person is habitually resident in the State. No such roles are designated for the purposes of assessing eligibility for housing supports and are conspicuous by their absence in the Bill.
12. It is essential that this process is transparent and that it is clear to applicants as to who is making the assessment, by what authority it is made, and the precise criteria being brought to bear.

Appeals Process

13. Where an applicant is unsatisfied with the outcome of their application for a social welfare payment, they may appeal to the Social Welfare Appeals Office. The manner by which an appeal can be made is set out in a statutory instrument.
14. Given the serious implications that may arise from the assessment as to whether a person is habitually resident or not in the context of their housing needs, it is vital to provide an appeals process in the Bill.

Habitual Residency Requirement for All Members of Applicant Household

15. EU/EEA, UK and some non-EEA nationals have a right to reside in Ireland with their families. The current requirement in the Bill for all members of the applicant household is to prove they are habitually resident. It will be problematic in practice for some applicants to evidence this or satisfy these criteria.
16. This will potentially exclude some who are enjoying and exercising this right from applying for social housing; or force them to live in overcrowded, unsuitable housing; or cause them financial hardship as they struggle to pay rent.

17. Much greater consideration needs to be given to this provision, the perceived need for it, and its likely consequences.

Case Example

Jiya is a nurse from India who has been working in Ireland, in a nursing home, for a few years. She has been living in accommodation provided by her employer which has really helped her settle in Ireland, but she has missed her husband and child. However, they are finally able to move over to be with her this year. Jiya is now looking for a home for her and her family. She does not earn enough to afford the rent on a two-bed dwelling and is hoping to access the Housing Assistance Payment. The proposed criteria for all members of the household to be habitually resident may exclude Jiya and her family from accessing the Housing Assistance Payment and likely leave them living in cramped housing that they will struggle to afford.

Reckonable Residency

18. The proposed 20(A)(1) states that to be eligible for assessment for social housing support, all members of the household must be a) lawfully resident and b) habitually resident. A further criterion is placed on all non-EEA citizens as per Section 20(A)(3) who, save for a number of exclusions, must have five years reckonable residency in the State with a current valid permission to be eligible for assessment.
19. Non-EEA citizens may alternatively be considered to have reckonable residency if they hold a “*current valid permission to remain in the State or a shorter number of years residency with a valid permission to remain in the State which would allow the applicant to attain 5 years residency.*”
20. Threshold has identified potential practical difficulties in the application of this proposed section, in particular the process by which reckonable residency is determined and by whom.

Definition of Reckonable Residency

21. The Bill does not provide a definition of reckonable residency provided, nor is there reference to the criteria for assessing such, Threshold wishes to emphasise that it is essential that a clear definition of reckonable residency be provided.
22. It is stated in the guidance note of the Bill that “*the policy position regarding the need for 5 years reckonable residency is based on section 15C of the consolidated Irish Nationality and Citizenship Act 1956*”. The aforementioned section does not offer a definition of reckonable residency.

Determining Reckonable Residency

23. An applicant will be required to provide proof of reckonable residency from the Garda National Immigration Bureau (GNIB) or Immigration Service Delivery (ISD), yet it is unclear to us what this proof will be.
24. It is our understanding that the GNIB and ISD do not issue documents stating whether a person has reckonable residency. Rather, the officials of these bodies make a determination on reviewing a person's immigration Stamps and issue a document that only states the Stamp held and how long the Stamp is valid.
25. We query how the Local Authority staff will determine reckonable residency. Given the complexity of the Irish immigration Stamp system, we further question their authority and capacity to do so.
26. This is not a critique of Local Authority staff but a recognition of the complexity, in particular the legal complexity, of the process.
27. As with the need for a designated person when assessing Habitual Residency Condition, a designated person is required to make an assessment of reckonable residency.

Guidance for Local Authority Staff

28. While it may seem overly cautious, we have concerns that when calculating reckonable residency, assessments may inadvertently conflate lawful residency and habitual residency.
29. While it is set out in the Scheme that the Minister may issue guidelines in respect of the habitual residency condition, it is our position that the staff of the Local Authorities will require detailed guidelines and support with not only this but also with assessing whether a person is lawfully resident in the State, and if they have reckonable residency. This is if it will be the Local Authority staff who will be making these determinations.
30. Such guidance will likely need to be reviewed and updated regularly to remain in line with any changes made to Irish immigration and residency legislation.

Potential Obstacles to Accessing Emergency Accommodation

31. It is unfortunately the case that there have been instances in which people have been denied access to emergency accommodation on the grounds that they do not have an open application for social housing.
32. While Mercy Law have described such instances as a misapplication of the law¹, the proposed amendments to the Housing (Miscellaneous) Provisions Act 2009 could potentially herald the wholesale refusal of emergency accommodation to people who are deemed ineligible to apply for social housing.
33. It is essential that those ineligible for social housing supports – who are some of the most vulnerable and isolated in our society – are not adversely impacted by changes to the legislation.
34. We recommend an additional amendment setting out clearly that Section 20 (existing) and Section 20(A) (as proposed) in no way place restrictions on a person’s access to, or the Local Authority’s role in providing them with, emergency accommodation.

Eligibility for Assessment

35. The proposed Section 20(A)(1) sets out two criteria [lawfully resident and habitually resident] “*In order to be eligible to be assessed for the social housing supports*”.
36. The phrasing of this section is out of step with Section 20 of the legislation, which is a cause for concern.
37. Section 20, as it currently stands, states that “*the housing authority concerned shall...carry out an assessment [...] of the household’s eligibility, and need for, social housing support*”.
38. This raises a number of questions for us as the wording suggests there will be a precursor stage to assessing social housing applications. This would create a separate, more protracted application process for which no prescribed process exists.
39. Will a person be asked to provide evidence that they are lawfully resident, habitually resident and have reckonable residency before their housing application is accepted for assessment?

¹ Mercy Law, (2023), 2022 Annual Report, <https://mercyllaw.ie/wp-content/uploads/2023/10/mercy-law-annual-report-2022.pdf>

40. Does this run the risk of providing a legal basis for a person’s housing application to be simply refused, as opposed to having their application assessed in full?
41. It is our understanding that, as a decision-making body, the Local Authority is obliged to give full and proper consideration of an application.
42. We recommend careful consideration of this wording, and its implications, to bring it in line with the rest of the Bill.

Conclusion

43. As stated at the outset, we envision difficulties in the practical application of the proposed amendments. Given the complex nature of the Irish immigration system, Threshold believes that the amendments and all related provisions – such as guidance documents and statutory instruments – must be carefully crafted with due consideration of all potential consequences.
44. To overcome these difficulties and ensure the provision of vital support to many who represent the most vulnerable in our society, Threshold has set out a number of recommendations.

Recommendations

- a) Set out in legislation the details of the person who will be making the determination as to whether a person is habitually resident and has reckonable residency.
- b) Make provision for an applicant to appeal a decision made by the Local Authority where an application is refused on the grounds that they are not habitually resident.
- c) Give further consideration to the requirement for all members of the applicant household to be habitually resident.
- d) Include a definition of reckonable residency.
- e) Provide an additional amendment that sets out clearly that Sections 20 (existing) and 20(A) (as proposed) in no way place restrictions on a person’s access to, or the Local Authority’s role in providing of, emergency accommodation.
- f) Review the wording “*In order to be eligible to be assessed for the social housing supports*” of Section 20(A)(1) to ensure it does not create a barrier to people submitting their applications to the Local Authority for assessment.

- g) Threshold recommends an expert consultation process regarding the proposed legislation. These are arguably the most meaningful changes to social housing law since the creation of the Housing (Miscellaneous) Provisions Act 2009. There are a significant number of elements in the Bill that are complex and require careful consideration, especially regarding access to potentially life-saving services. We are appreciative that this session was scheduled as several civil society organisations wrote to the Chair of the Committee to express their concerns.

45. We wish to thank the Committee for their time, their consideration of our submission and their ongoing work in reviewing this Bill.

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