

Research and Library Services



**Northern Ireland
Assembly**

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HOUSING BILL

Clauses 1-11, 17-22 and 120-121

Anti-Social Behaviour

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This Bill research paper provides an overview of Clauses 1-11, 17-22 and 120–121 of the Housing Bill. Provisions in relation to Introductory Tenancies, extensions and additions to the grounds for possession, injunctions against anti-social behaviour and ineligibility for social housing as a result of anti-social behaviour are examined in detail. In addition, current legislation and practice in Great Britain is considered, and potential issues of concern raised through written submissions concerning the Bill are also outlined.

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SUMMARY OF KEY POINTS

The purpose of this Bill research paper is to provide an overview of Clauses 1–11, 17–22 and 120–121 of the Housing Bill (from here on referred to as ‘the Bill’). The Minister for Social Development introduced the Bill to the Northern Ireland Assembly on the 25th June 2002. The Northern Ireland Assembly agreed the second stage of the Bill on the 3rd July 2002. Some key points relating to the clauses as discussed in this research paper are outlined below:

- Anti-social behaviour can be defined as anything from low-level, persistent nuisance to serious violence and other criminal behaviour. It includes all behaviour impacting negatively on residents’ quality of life.
- Clauses 1–11 of the Bill propose to enable the Northern Ireland Housing Executive (NIHE) and Registered Housing Associations (RHAs) to offer ‘introductory’ tenancies with no security of tenure for a 12-month probationary period, for all new tenancies. If a tenant ‘misbehaves’, e.g. acts outside the tenancy agreement during the probationary period, the landlord can seek an order for possession without any requirement to prove grounds. If the tenant’s behaviour is good or gives no cause for concern the tenancy will become ‘secure’ when the 12-month period expires.
- Clauses 17–22 cover the extension of the grounds for possession to include a tenant’s visitors or guests, if the tenant has committed domestic violence and/or the tenancy is found to have been awarded on the basis of a false statement made by another party at the tenant’s instigation.
- Clauses 121–122 provide that those participating in anti-social behaviour will not be eligible for the allocation of social housing.
- Existing legislation in Northern Ireland means that all tenants are secure tenants immediately they are awarded a tenancy and social landlords must provide evidence in order to obtain possession through the courts. The proposals in the Housing (NI) Bill 2002 replicate the provisions of the 1996 Housing Act in England and Wales.
- A Consultation paper *Tackling Anti-Social Tenants* was published by DTLR in April 2002. In addition to presenting proposals for strengthening current approaches to evicting anti-social tenants, it also suggests measures for tackling the causes of anti-social behaviour.
- This Bill paper provides a review of the advantages and disadvantages of remedies to anti-social behaviour currently operating in Great Britain.
- During the consultation phase on the Housing Bill, the provisions relating to anti-social behaviour received varying degrees of support. A number of concerns and suggestions were also highlighted.

CONTENTS

1.0	Anti-Social Behaviour – Proposed Clauses	1
2.0	Background to Anti-Social Behaviour	2
2.1	What is Anti-Social Behaviour	2
3.0	Existing relevant policy and legislation in Northern Ireland	3
4.0	Relevant policy and legislation in Great Britain	3
4.1	Introductory Tenancies	3
4.2	Grounds for Possession	3
4.3	What is an Anti-Social Behaviour Order?	4
4.4	Legislation and Policy in Scotland	4
5.0	Most recent Government thinking in this area	5
6.0	Relevant policy in Europe and USA	5
7.0	A Review of the Use of Measures to Tackle Anti-Social Behaviour in Great Britain	6
7.1	Needs of Social Housing Tenants	6
7.2	Resources	7
7.3	Linkages to Homelessness	7
7.4	Lack of Alternative Approaches	8
8.0	Potential Issues for Northern Ireland	8
 APPENDIX 1		
	Issues raised in Submissions on the Housing Bill	9

1.0 ANTI-SOCIAL BEHAVIOUR

1.1 Proposed Clauses

The 1996 Housing Act in England and Wales introduced extensive legal powers to deal with anti-social behaviour. The Act included provisions for introductory tenancies, extended grounds for possession and enabled landlords to take out injunctions against non-tenants. The same legal powers are contained in the Housing Bill 2002 for Northern Ireland.

This section outlines the relevant clauses relating to anti-social behaviour in the Housing Bill.

1.2 Clauses 1–11

Clauses 1–11 of Chapter I, Part I of the Bill propose to enable the NIHE and Registered Housing Associations (RHAs) to offer 'introductory' tenancies with no security of tenure for a 12-month probationary period, for all new tenancies. If the tenant 'misbehaves' during the probationary period the landlord can seek an order for possession without any requirement to prove grounds. If the tenant's behaviour is acceptable the tenancy will become 'secure' when the 12-month period expires.

At present all social rented tenancies are normally 'secure' and cannot be brought to an end except by a court order for possession. The courts will not grant such an order in respect of a secure tenancy unless there are statutory grounds for making such an order, and proving such grounds can be difficult and time-consuming.

1.3 Clauses 17–22

These clauses in Chapters II and III of the Bill provide for extensions and additions to the grounds for possession and also injunctions against anti-social behaviour.

Clause 17 proposes an extension of the grounds for possession of a secure tenancy in relation to nuisance to include:

- Nuisance caused by a tenant's visitors or guests;
- Nuisance caused to persons visiting or having lawful business in the area;
- An arrestable offence committed by the tenant or by their visitors or guests.

Clauses 18 and 19 introduce two new grounds for possession, where:

- Domestic violence has been committed by the tenant;
- It is found that the tenancy has been awarded on the basis of a false statement made by another party at the tenant's instigation.

Clause 20 provides for a streamlining of the legal processes for obtaining an order for possession, by empowering the courts to dispense with the serving of certain notices in urgent cases.

Clause 21 proposes that the NIHE and RHAs have the right to apply for an injunction for anti-social behaviour prohibiting any person from entering/being in the area of residential premises and causing nuisance, annoyance and/or 'harm'. At present social landlords have no scope for action where a non-tenant causes nuisance to their tenants. Clause 22 provides a definition of the term 'harm'.¹

¹ Clause 22 defines 'harm' for the purposes of section 21(3). Harm, in relation to a person who has reached the age of 18 years, means ill-treatment or the impairment of health, and in relation to a child, means ill-treatment or the impairment of health or development.

1.4 Clauses 120–121

Chapter II of Part III of the Bill includes a number of amendments to the Housing (NI) Order 1981. Clauses 120 and 121 relate to the interpretation of the Order and the allocation of housing, and are again relevant to the issue of anti-social behaviour.

Clause 121 outlines the circumstances in which people will not be eligible for the allocation of social housing. This includes a person from abroad, if he is a person subject to immigration control and ineligible for an allocation of housing accommodation for various reasons. The paragraphs of key importance for this Briefing Paper are 121(6) and (7). These note that individuals are ineligible for allocation of housing if the NIHE is satisfied that they, or a member of their household, has been guilty of unacceptable behaviour, serious enough to make them an unsuitable tenant, and which would, if the person concerned had been a secure tenant, provide grounds for possession relating to anti-social behaviour.

2.0 BACKGROUND TO ANTI-SOCIAL BEHAVIOUR

Anti-social behaviour has been a much debated topic in Great Britain over the last decade as evidenced by frequent media attention, references in the housing press² and a series of inter-related pieces of legislation, including the Housing Act 1996, the Noise Act 1996, and the Crime and Disorder Act 1998. All of these seek to enable social housing landlords to take action more speedily against tenants who are deemed to be 'anti-social'.

2.1 What is anti-social behaviour?

A number of definitions are available, however the one provided by the Office of the Deputy Prime Minister (ODPM) in Great Britain, is as follows:

“Anti-social behaviour can sometimes be of a serious, and criminal nature, including:

- drug dealing
- racial and other harassment
- physical violence

It can also include such things as loud music, often late at night, barking dogs, verbal abuse and vandalism which, while not criminal in nature, can be equally detrimental to the quality of life in the community.”³

A recent Consultation Paper⁴ provides the following summary of the definition of anti-social behaviour:

“Whilst there is no agreed definition of anti-social behaviour, residents know it when they see it or hear it. It can be anything from low-level, persistent nuisance to serious violence and other criminal behaviour. It includes all behaviour that impacts negatively on residents’ quality of life in and around their homes. It is caused both by residents and non-residents and can affect both. Examples are noise nuisance, the fouling of public areas, aggressive and threatening language and behaviour, actual violence against people and property and hate behaviour which targets members of identified groups because of their perceived differences.”

² *Inside Housing, Roof, Housing Today* etc.

³ ODPM, Fact sheet on Anti-social behaviour in housing.

⁴ *Tackling Anti-Social Behaviour*, A Consultation Paper, DTLR, April 2002, page 7.

3.0 EXISTING RELEVANT POLICY AND LEGISLATION IN NORTHERN IRELAND

Existing relevant legislation in Northern Ireland includes the Housing (NI) Order 1981 which includes provisions relating to eligibility for housing allocation, and the Housing (NI) Order 1983 which details grounds for possession. As stated previously there is currently no legislation dealing with introductory tenancies.

It may also be useful to note a number of other steps in terms of policy currently being taken in Northern Ireland:

- As part of its Community Safety Plan the NIHE is in the process of developing detailed guidelines and procedures for dealing with complaints of anti-social behaviour, including mediation. These are currently being piloted in a number of district office areas;
- SHAC is operating a Tenancy Support Scheme, which appears to be the first of its kind in Northern Ireland;
- The Universities are jointly managing a community liaison service that is currently available in the Holyland area of South Belfast in which a community liaison office is available to deal with any local problems which may exist between students and local residents.

4.0 RELEVANT POLICY AND LEGISLATION IN GREAT BRITAIN

The Housing Acts of 1985 and 1996 contain the main powers available to Council landlords for dealing with tenants who breach their tenancy agreement by causing a nuisance.

4.1 "Introductory" tenancies

The 1996 Act permitted local authorities to set up an "introductory tenancy" scheme. The scheme applies to all new tenants, and lasts for 12 months, after which the tenancy becomes secure unless the local authority has repossessed the dwelling. This is identical to the proposals for Northern Ireland.

The eviction process for an introductory tenant is different to that for a secure local authority tenancy, in that no grounds for possession have to be made to the court. A tenant has the right to an internal review of any decision to evict, and regulations published by the Government make provisions for how the review should be carried out.

4.2 Grounds for possession

The 1985 Act provided grounds for possession based on nuisance and annoyance to neighbours, and this was strengthened in the 1996 Act. This extended provisions to cover behaviour within the locality of the tenant's property (for example in communal areas and walkways) and to cover the behaviour of visitors to the property, who may not be tenants themselves.

The Act also enabled social landlords to evict a nuisance tenant for behaviour which is "likely to cause" a nuisance or annoyance, so that the landlord does not have to call the victim of the behaviour to give evidence against the person causing the problem. This might instead be provided by a "professional" witness, a local authority officer, or perhaps a neighbourhood warden.⁵

⁵ Sunderland Council is believed to have been the first council in 1993, to employ professional witnesses, The Guardian, 7th January 1997, *Law: Beggar My Neighbour*.

The 1996 Act also made it possible for the social landlord to:

- Evict a tenant, a lodger, or a visitor who has been convicted of an arrestable offence (for example drug dealing) in the location of the dwelling;
- Start possession proceedings against a tenant as soon as a notice for possession has been issued, rather than waiting 28 days (in the case of councils) or 2 weeks (for other social and private landlords), thus making the repossession process faster.

4.3 What is an Anti-Social Behaviour Order?

The Crime and Disorder Act 1998 provided for a new remedy called an Anti-social Behaviour Order (ASBO). ASBOs are community-based orders, similar to injunctions, which can be applied for to the courts by the police or a local authority, in consultation with each other. They may be made against an individual (as young as 10 years old) or several people whose behaviour causes alarm, distress or harassment to one or more people and are designed to protect the community from future, similar behaviour. The Order prohibits the person against whom it is made from doing anything described in the Order. The Orders are effective for a minimum of two years and breaches can result in imprisonment. Since they came into effect in April 1999, 518 ASBOs have been issued by police authorities across England and Wales, although this has varied from 67 Orders being issued in the West Midlands to none in Essex, Dyfed Powys and Wiltshire.⁶

The Home Office also issued guidance in June 2000 to help police and local authorities produce protocols to establish effective working relationships with their partner agencies to tackle anti social behaviour. It should be noted that the Housing (NI) Bill does not contain provision for ASBOs.

4.4 Legislation and Policy in Scotland

It is worth mentioning that in Scotland a slightly different approach was taken in the mid-1990s. In 1995 the Scottish Office consulted on proposals regarding legislation which sought to introduce probationary tenancies in Scotland. Two options were offered – the first related to the provisions now adopted in England and Wales via the 1996 Act. The second related to an proposal initially put forward by Dundee District Council aimed at targeting limited period probationary tenancies on former tenants who had previously been evicted for serious anti-social behaviour (or rent arrears) but who the local authority was considering re-housing. The latter option was provided for in legislation - Housing (Scotland) Act 2001 - and allowed a local authority to offer a probationary tenancy instead of a secure tenancy only in certain defined circumstances. This has provided a mechanism for landlords to rehabilitate former tenants in situations where the local authority would have been wary of offering a permanent tenancy for fear that there might be a re-occurrence of the offending behaviour. Reference to the evaluation of this approach is contained in the next section of this paper.

⁶ According to *New Start* April 2002 “home secretary David Blunkett is doing everything in his power to make sure councils step up their use of ABSOs”, however there are concerns amongst housing and community workers and police authorities that an ABSO can take months to obtain and the process is costly.

5.0 MOST RECENT GOVERNMENT THINKING IN THIS AREA

The next section of this paper outlines some of the clear (and likely) advantages and disadvantages of the current range of measures employed to tackle anti-social behaviour. Already in the light of practice following the 1996 Act, the Government is reviewing further actions. DTLR issued a Consultation paper *Tackling Anti-Social Tenants* in April 2002.⁷ Its introduction stated the following:

“The Government recognises the misery and disruption caused by anti-social behaviour – that the lives of many are blighted by the behaviour of an unreasonable minority. It is keen to ensure that social landlords have the means to deal swiftly and effectively with this minority of nuisance tenants and their associates, whilst ensuring that the means are necessary and proportionate. The Government is determined that, when it is the appropriate and proportionate response to anti-social behaviour, eviction must happen with all possible speed. This consultation paper is about landlord action to stop anti-social behaviour.”

The proposals in this consultation paper included the following:

- Establish a duty to publish anti-social behaviour procedures;
- Give landlords increased powers to end tenancies for anti-social behaviour;
- Extend the powers of the court to grant injunctions, and;
- Extend the period of the introductory phase of the tenancy.

The consultation paper also acknowledges that enforcement and eviction are not the only means of stopping anti-social behaviour and further measures are suggested for preventing anti-social behaviour and rehabilitating those evicted. At the launch of this paper the Secretary of State for DTLR said “alongside enforcement needs to go prevention and rehabilitation. We must make long lasting positive change to people’s lives. Recognising the causes behind anti-social behaviour, and treating them, will go some way to doing this.”⁸

These measures include the following:

- Mediation services
- Uniformed warden patrols
- Diversionary projects for youths
- Rehousing with appropriate intensive support
- Reward schemes for tenants with a record of a well-conducted tenancy
- Structured interviews of juveniles and the use of Acceptable Behaviour Contracts
- Multi-agency tasking on anti-social behaviour casework
- Close working with the police.

6.0 RELEVANT POLICY IN EUROPE AND USA

Similar to Great Britain, housing professionals in the United States manage both tenants and properties. The term “Zero Tolerance - one strike and you're out!” was coined in New York, in relation to tenants of New York Public Housing Authority.⁹ A high level of crime has resulted in undesirable tenants being evicted. This has an added advantage, contributing positively to the lengthy housing waiting list.

⁷ Responses were to have been returned by 12th July 2002.

⁸ DTLR News Release, 2nd April 2002.

⁹ Public housing only comprises 2% of the total housing stock – NYPHA is the largest public landlord.

Other European countries have moved in the direction of marrying housing and support services, to ensure a more holistic service. In Berlin for example, no social/public housing tenant can be evicted unless a social work report is provided to the court. The main reasoning for this is that to evict a vulnerable tenant only adds to his/her problems, it does not deal with them. In both Germany and the Netherlands qualified social workers respond to cases of anti-social behaviour in housing – it is not viewed as appropriate for housing professionals to do this.

This is in direct contrast to Great Britain where housing officers are expected to give support and advice, but also to take punitive action as well as provide evidence in court.

7.0 A REVIEW OF THE USE OF MEASURES TO TACKLE ANTI-SOCIAL BEHAVIOUR IN GREAT BRITAIN

This section provides a review of the perceived and actual usage of measures identified to tackle anti-social behaviour introduced in Great Britain over the last five years.

7.1 Needs of social housing tenants

The current emphasis on managing who obtains and maintains social housing, and the links between this and tenants' behaviour, overlooks to some extent at least the complex and specific needs of many social housing tenants. Research by Savory¹⁰ in Greater Manchester found that 89% of housing agencies had tenants who needed support to maintain their tenancy, but who did not meet social services and health authorities criteria for such support.

Research commissioned by Joseph Rowntree Foundation (JRF)¹¹ indicated that two thirds of alleged perpetrators were “described by housing officers as having particular vulnerabilities or special needs such as mental health problems or other disadvantages. High levels of poverty were also evident, with 90% being dependent on state benefits of some kind.”

The research also highlighted a growing reluctance amongst housing professionals to use the law when dealing with anti-social behaviour, as they were concerned that action is only partially effective and that the individuals concerned often needed ongoing support rather than eviction. “In fact the experience in Britain showed that eviction often served only to move the problem on to another area, or even the next street, and failed to tackle the underlying causes of the behaviour.”¹²

The same research found that around half of the social landlords using introductory tenancies had subsequently evicted tenants. However, the research queried their effectiveness as a tool against anti-social tenants as most cases for eviction were for rent arrears (68%) rather than for neighbour nuisance (19%).

In some cases it was claimed that as a result of the 1996 Act parents had placed their rebellious children in care in order to avoid eviction. For example, in Sunderland between October 1997 and March 1998, there was a 40% increase in the numbers of child criminals remanded into the care of the city council.¹³

¹⁰ Savory J, 'Help Wanted', *Housing*, July/August 1998.

¹¹ *Social Landlords' use of legal remedies to deal with neighbour nuisance*, Research conducted by Sheffield Hallam University and published by Joseph Rowntree Foundation July 2000.

¹² *Housing Rights Review*, Issue 2, Spring/Summer 2002, page 4.

¹³ The Guardian, 8th June 1998, *Parents 'place tearaways in care to avoid eviction'*.

In many cases therefore the powers introduced by the 1996 Act appear to have been used for purposes other than those originally intended.

7.2 Resources

There is some concern about the level of resources social landlords are investing in certain initiatives, such as “strengthening tenancy agreements, setting up teams or appointing an officer to prioritise action, installing CCTV, targeting legal budgets to deal with 'ASB' cases; using professional witnesses and joining groups such as the 'Social Landlords Crime and Nuisance Group' (based in Coventry).”¹⁴

The Office of the Deputy Prime Minister notes that research shows that up to 20% of housing managers' time is spent dealing with nuisance and anti-social behaviour, and that between 2% and 10% of tenants on any given estate have been the subject of complaints. Clearly this has an impact on the finite resources allocated to social housing. In addition, disproportionate resources and time can be taken to deal with an anti-social behaviour case and affect the time allocated to dealing with the day-to-day issues raised by a tenant.

In addition, the JRF research¹⁵ highlighted the need for landlords to ensure that housing officers have the skills, knowledge and resources to be able to undertake thorough investigations and act in a professional manner when confronted with conflicting accounts of events. Again the appointment of dedicated officers and teams for this work is costly.

7.3 Linkages to homelessness

With regard to housing stock, Manchester City Council, for example, “seeks to take legal action in all cases of anti-social behaviour and deems those who are evicted on this basis to have made themselves intentionally homeless. This then denies them the right to join the housing register.”¹⁶ This is standard practice for all RSLs and local authorities.

Until comparatively recently there appeared to be limited Government concern in Great Britain in relation to where tenants went after they have been evicted – those who are evicted because of 'anti-social behaviour' have to live somewhere or they are likely to become further socially excluded. Organisations such as the Chartered Institute of Housing expressed their concerns commenting that “playing musical chairs with anti-social neighbours is no solution.”¹⁷

The most recent Consultation Paper in Great Britain¹⁸ on tackling anti-social tenants, acknowledges this concern, “some families and individuals are evicted for anti-social behaviour...Typically, such families and individuals will either immediately secure a private tenancy or make a homelessness application to the local authority.”

The consultation paper also points to a successful project – the Dundee Families Project – which rehabilitates those evicted for anti-social behaviour who are subsequently homeless.” This latter model arose because of the slightly different legislative approach taken in Scotland as outlined in Section 4.4.

¹⁴ *Caring Social Landlords of State Police? Current Approaches to 'anti-social behaviour'*, Esther Goulding, Senior Lecturer in Housing Studies, College of North East London.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ The Independent, 11th September 1997, *Tread Softly and Tame the tenants*.

¹⁸ Op. cit., DTLR, page 36.

7.4 Lack of alternative approaches

Experience in England and Wales points towards a reliance on introductory tenancies and ASBOs, rather than the development of alternative approaches to deal with problem tenancies. Alternative approaches include more clearly worded tenancy agreements spelling out that ASB is not acceptable, dispute resolution and mediation, sensitive allocations policies and floating support services. Such alternative approaches are outlined in the DTLR 2002 Consultation paper, as noted in Section 5.0.

JRF research, published in 1998¹⁹ noted the following:

“The approach to reform has been piece-meal. The researchers conclude that the potential contribution to be made by each reform, and its potential effect on the use of other remedies, have not been adequately worked out. Policy has developed, and continues to develop, incoherently in this area.”

This research goes on to suggest:

“... that the Government itself is unclear both about the underlying problem, and the specific objectives of the proposed solution.”

8.0 POTENTIAL ISSUES FOR NORTHERN IRELAND

A wide range of responses was made during the consultation process on the Bill on the different clauses in relation to anti-social behaviour.

Twenty-nine comments were received regarding Introductory Tenancies. These were mostly supportive, with some suggestions about the need for independent and external review.

Thirty-three comments were received regarding repossessions. These were largely supportive of the Bill's proposals, although there were concerns about how tenants could effectively control their visitors' behaviour and what this ultimately meant for the tenant, particularly those who are vulnerable.

There were 21 comments on the topic of injunctions against anti-social behaviour, almost all of which were supportive of the Bill's proposals.

Overall therefore there appears to be a broad welcome for the provisions relating to anti-social behaviour and introductory tenancies, as many organisations and tenants themselves are concerned that the behaviour of a minority affects the majority. It is recognised that the introduction of a 12-month probationary period provides the social landlord with sufficient time to assess the suitability of the tenant(s) for the award of a secure tenancy. Concerns and suggestions are outlined in more detail in Appendix 1.

Two points are perhaps worth highlighting in this conclusions section:

- The provisions of the Crime and Disorder Act 1998 are not proposed for Northern Ireland – these conferred powers upon English local authorities to obtain ASBOs, thus barring individuals from whole neighbourhoods.
- Great Britain policies in relation to anti-social behaviour are continuing to evolve and develop, as referenced in the April 2002 DTLR Consultation paper. The provisions in the Housing (NI) Bill 2002 do not take into account any of these new proposals.

¹⁹

Legal Remedies for neighbour nuisance: Comparing Scottish and English Approaches, Caroline Hunter and Tom Mullen with Suzie Scott, published for JRF by YPS, 1998.

Providing research and information to the Northern Ireland Assembly

APPENDIX 1**Issues raised in submissions on Housing Bill**

Issue	Detail of Concern/Suggestion
Introductory tenancies	Need for review of decisions by an independent body, external to NIHE and RHAs.
Definition of nuisance	Concern that social landlords might include rent arrears in this. Also concern about how/who defines nuisance and who will determine guilt. Suggestion that termination of introductory tenancies should be clearly restricted to anti-social behaviour reasons.
Fast-tracking eviction	Concern that this will only move the problem on to another area/landlord and will not address the underlying behaviour issue.
Repossession Behaviour of visitors	Concern that in some cases a tenant may have little control over a visitor's behaviour in their property, never mind in the wider locality. Also concern that a vulnerable tenant could be evicted whilst the troublemaker is still at 'work' in the community.
Comprehensive housing strategy	Concern that provisions are just about enforcement, and do not provide for proactive/preventative measures to tackle the underlying behaviour issue. Also suggestions that there is a need to further evaluate practice in Great Britain.
Vulnerable tenants	Concern that the behaviour of some disabled and vulnerable tenants could be assessed as a nuisance, when in fact it is part of their disability or their complex needs.
Homelessness	Concern that workings out of the new remedies to anti-social behaviour will have an adverse impact on the level of homelessness in Northern Ireland.
Injunctions against anti-social behaviour	Suggestions that social landlords should be able to ban individuals from whole areas.
Coverage of provisions	Suggestion that provisions should be extended to cover private landlords.
Term ill-treatment	Suggestion that this should include reference to racial harassment or abuse.
Housing Benefit	Suggestion that, as currently exists in Great Britain, Housing Benefit could be withheld from those engaged in anti-social behaviour.