



Submission to the Public Consultation on a Referendum on Housing in Ireland

August 2022

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Introduction

Galway Simon Community has been working with people experiencing housing insecurity and homelessness for over 40 years in the West of Ireland. As a member of Simon Communities of Ireland (SCI) we are proud to have SCI chair the Home for Good coalition and we strongly believe that constitutional change is an essential underpinning for any successful programme to tackle our housing and homelessness crises. As a member of The Simon Communities of Ireland we fully endorse and support the Home for Good submission to the consultation.

A constitutional right to housing is not a new and radical idea. In fact, eighty-one countries around the world have a constitutionally protected right to housing, including several of our European counterparts such as Belgium, Finland, Greece, the Netherlands, Portugal, Spain and Sweden.¹

Our recent history has shown us that Ireland is capable of taking bold and significant action when we decide to tackle a crisis. During the Covid-19 pandemic, we saw leadership and coordination from the Government as they took the necessary steps to protect people not only from the Covid-19 virus, but also from poverty, social exclusion and homelessness.

Galway Simon asks that the State apply this same ambition and urgency to try to get ahead of the homelessness crisis and provide the people with an opportunity to vote in a referendum that will result in a constitutional right to housing in Ireland.

The consultation asks submissions to consider whether there should be a constitutional amendment and if so what form it should take. This submission will answer these two questions and speak to the need to ensure this referendum is put to the people.

Should there be a constitutional amendment and what form should it take?

Galway Simon support the call made by many organisations for a referendum to be held on the right to housing. Although the Government has committed to holding a referendum on housing, there is no commitment that the referendum will lead to a constitutional amendment on the right to housing. This is a very important distinction.

To ensure a timely progression, Galway Simon believes that the Commission should propose specific wording for the amendment to be voted on, and allow for consultation on the wording between housing, academic, and legal experts.

To ensure the proposed wording leads to a meaningful constitutional change, the proposed amendment needs to create a balanced, stand-alone, and enforceable right to housing. Ideally, the proposed wording from the Commission would build on the work already done in this area by Home for Good.

¹ MLRC, *'The Right to Housing in Ireland'*. Available at: <https://mercyllaw.ie/wp-content/uploads/2019/06/MLRC-Report-on-Right-to-Housing-in-Ireland-May-2016.pdf>

Highlighted below is the Home for Good recommended wording for a constitutional amendment², along with an outline of the reasons a balanced, stand-alone, and enforceable right to housing is needed.

Recommended Wording Developed by Home for Good:

The insertion of a new Article 43A on Housing in the Constitution as follows:

Housing

Article 43A

1 The State recognises, and shall vindicate, the right of all persons to have access to adequate housing.

2 The State shall, through legislative and other measures, provide for the realisation of this right within its available resources.

1. The Need for a Balanced Right

People experiencing ongoing housing insecurity in a turbulent housing market are failed by an imbalance in our Constitution. Bunreacht na hÉireann currently provides protection of private property rights in both Article 43 and Article 40.3. There is no equivalent right to housing in the Constitution. This means that the starting point of every legal analysis in respect of the regulation of land begins from the perspective of a property owner's right. While this right may be restricted in the interests of the common good, the starting point for analysis remains the private interest, with the common good only relevant insofar as it justifies the State in limiting this right to private property. As a result, the Constitution perceives property as a private interest held by a rights holder, with the common good cast in opposition and the State given the role of protector of this private right.

A more effective and proactive Constitutional approach, in the context of the current crisis and in preventing future crises, would be to continue the existing protection for private property rights but weigh these against a right to housing. In this scenario, the legislature and the courts would be tasked with balancing two rights against each other, subject to the usual restrictions around proportionality and rationality.

This would remove the current overly narrow interpretation of private property rights and enable the Government to respond to the current housing and homelessness crisis in a manner which properly and fairly balances competing interests. Not only does this create a fairer balance, it will better frame the State's role in housing — not only as a protector of private property rights but as a protector of our human right to safe and secure housing.

2. The Need for a Stand-Alone Right

Policymakers have repeatedly ruled out progressive housing policies to tackle the current crisis, on the grounds that the constitutional protection of private property presents a strong barrier to State intervention. An 'Oireachtas Research Paper' published in September 2019³ exposes a very worrying pattern. It shows that on twelve separate occasions over recent years, pending legislation in the Dáil

² More information on the Home for Good Wording and its development is available here:

https://www.homeforgood.ie/assets/files/pdf/note_from_the_legal_sub-group_expanding_on_standalone_right_-_october_2020.pdf

³ Keyes, "Briefing Paper: Property Rights and Housing Legislation", Oireachtas Library and Research Service, 2019. Available here: https://colettekelleher.ie/wp-content/uploads/2020/01/Enquiry-2019_715-Property-rights-and-housing-legislation.pdf

has not progressed due to the spectre of Article 43 being raised as a barrier. Furthermore, recent proposals to extend the eviction moratoriums to prevent rising homelessness, were not considered by Government, in part due to constitutional protection of private property rights. This cannot be allowed to continue in the face of the plight of those at the sharp edge of the housing shortage.

The Constitution needs a right to housing as a stand-alone right, of equal value to the right to private property. Owner-occupiers will have increased constitutional protection under a new stand-alone right to housing. An owner-occupier will have the right to private property, the right to housing and the right to inviolability of the dwelling to protect their home. None of these rights are absolute, but it is worth stressing that a person who lives in a home which they own will have nothing to fear from this proposed amendment and will, if anything, have their rights strengthened.

3. The Need for an Enforceable Right

As a directly enforceable right, it is necessary to state the recognition and guarantee of the right in plain terms. However, as what is being proposed is a socio-economic right, it will involve positive duties being placed on the State and must have some regard to resources. As such, it is necessary to affirm the positive obligation to realise the right and the conditions attaching to that obligation. This has already been achieved in Article 42.4 in respect of the right to primary education and a similar approach is recommended here.

A constitutional amendment providing for a standalone right to housing will not guarantee everyone a house, never mind a “free” house. Rather, the right provides for generalised access to housing to an appropriate standard. It is expected that it would operate similarly to the right to education in Article 42.4, which has been a significant impetus for action but has never guaranteed parents the right to a school of their choosing in the location of their choosing.

Why do we need a Constitutional Right to Housing?

A constitutional right to housing would be a catalyst for change that would re-prioritise the delivery of housing on a national level.

There is nothing in our Constitution that prohibits or restricts the Government from providing housing for people in Ireland. Despite this, we have a housing crisis spiralling out of control. Homelessness is on the rise, rents have been unsustainably high, and housing stock available for renters and buyers is at an all-time low.

While it is true that nothing inhibits the Government from providing housing, nothing obligates them to do so. The Constitution is a statement of fundamental values that the people of Ireland believe in. It shapes all Government policy and legislation. At present, housing is not stated within these values. As a result, housing has not been given its due priority and urgency.

The absence of the right to housing perpetuates the housing and homelessness crisis. Working on the front-line, we can see what a right to housing would mean for those experiencing housing exclusion, homelessness, and or living in inadequate, unsafe, or overcrowded accommodation.

Increasing Homelessness

The latest figures from the Department of Housing, Heritage and Local Government⁴ show 494 people are now living in emergency homeless accommodation across Galway, Mayo and Roscommon, a 20% (82 people) year-on-year increase in the number of people experiencing homelessness. There were

⁴ Available at: <https://www.gov.ie/en/collection/80ea8-homelessness-data/>

88 families with 206 children living in Emergency Accommodation across Galway, Mayo and Roscommon in June 2022, just one below the peak number of families in Emergency Accommodation in the West in September 2019.

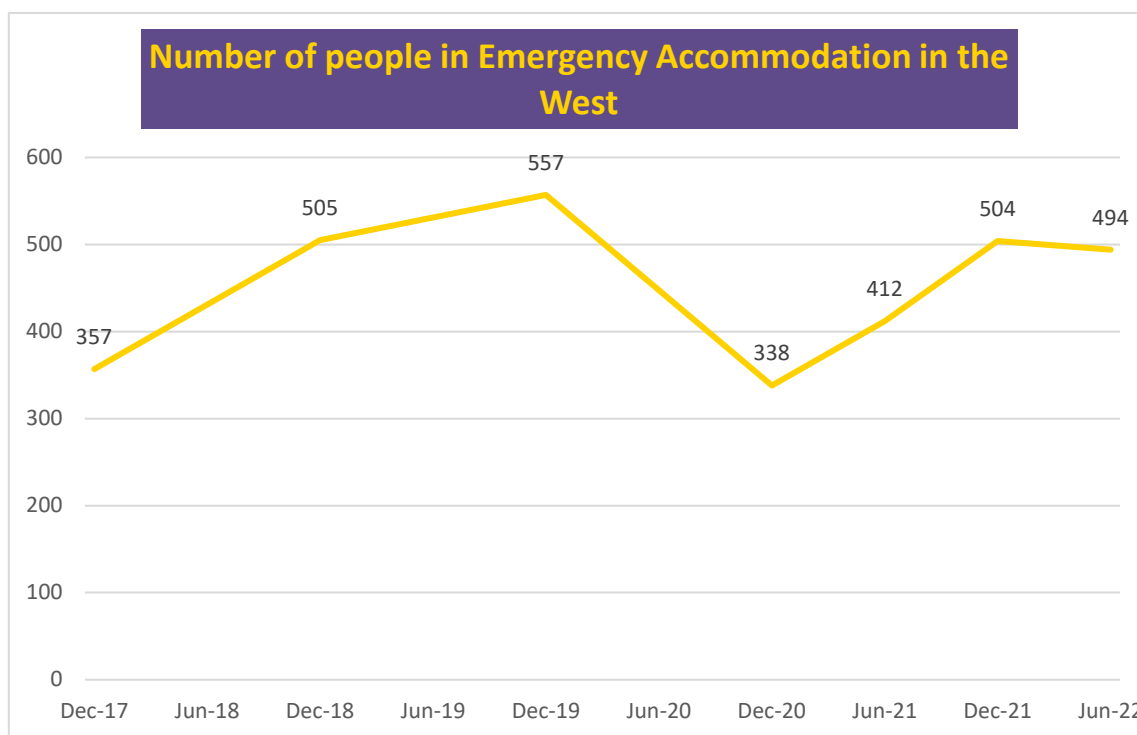


Figure 1: Source Department of Housing, Planning and Local Government. Homelessness Data.

Increasing Rents and a Lack of Affordable Properties

Demand within the Private Rental Sector is far outstripping the current supply. Those relying on private rented accommodation include people in receipt of social housing benefits, private residents and students. Additionally, Galway City has a vibrant tourist industry and there is significant demand for short term lets through sites such as Air BnB. On July 15 2022 there was 809 active rentals available in Galway City on one short term letting site and 56% were entire homes⁵.

With demand for housing far greater than the available supply, the most basic economic principle applies – prices increase.

Over the past five years, average rents have risen dramatically. In Galway City rents have increased by 53%, in Galway County by 69%, in Mayo by 52% and Roscommon by 53%. Very few households have enjoyed a similar increase in net income. With such a reliance on the private rental sector and relentless increases in rent prices over recent years, renting has become out of reach for many within our community. The link between poverty and housing insecurity or homelessness is heightened in the context of housing now accounting for an average of 55% of a single person’s

⁵ Source: <https://www.airdna.co/vacation-rental-data/app/ie/default/galway/overview>

minimum living costs in Dublin, and over a third outside of Dublin⁶. For many, the increasing percentage of income being spent on rent is putting pressure on household income and food and fuel poverty are significant issues.

Locked Out of the Market, a periodic research study conducted by the Simon Communities of Ireland, tracks the number of properties advertised to rent in the Private Rental Sector that are within the Housing Assistance Payment (HAP) limits. The latest report released in July 2022 showed that for the sixth study in a row, there were no properties that fell within the HAP limits in Galway City Centre out of the average of 7 that were available to rent. In the wider Galway City area, there were no properties that fell within the HAP limits out of the average 17 properties available to rent⁷.

The housing and homelessness crises are closely intertwined. Unaffordable rents and a low supply is reflected at every level of society; young people are living with their parents longer, as fewer people own their homes older people struggle to keep pace with rents, and the number of people living in emergency accommodation continues to grow steadily.

An unstable rental market combined with a lack of availability and affordability can force people into tenancy breakdown, housing insecurity, and into homelessness. State supports are no longer meeting the needs of low-income households to protect them from homelessness. A right to housing would refocus the need for suitable, affordable housing in Ireland and make a meaningful change to the ever-rising levels of homelessness.

What Would a Right to Housing Achieve? A Catalyst for Change

The Constitution is a statement of fundamental values that the people of Ireland believe in. It shapes all Government policy and legislation. A home is fundamental for a persons' dignity and necessary to form a foundation for life.

The recommended balanced, stand-alone, and enforceable amendment gives a constitutional framework for State involvement in the provision of housing for those who cannot house themselves. It places a positive constitutional obligation on the State to act, rather than, for example, to adopt an entirely passive market-led approach to housing.

This already occurs, to some extent, at a statutory level through the Housing Acts, but the obligation would be raised to a constitutional level and balanced against the right to private property. It would become the touchstone against which all action or inaction by the State would be measured.

The imbalanced constitutional structure has proven repeatedly to fail people in need of housing. It perpetuates high levels of vacancy and dereliction across the country, it allows for land hoarding, and it has contributed to our national housing crisis.

Including a Right to Housing in the Constitution would not alone solve our current housing crisis. However, it has an enormous potential to be a catalyst for change. Including a Right to Housing in our Constitution places an onus on the State to develop and implement policy and practice that will meet the right to adequate housing of our citizens, and safeguard against future housing crises occurring in the first place.

⁶ Source: https://www.livingwage.ie/download/pdf/living_wage_annual_paper_2021-22.pdf

⁷ Source: [Simon Communities in Ireland > Publications > Research](#)

With 4,052 households waiting for social housing, 494 people in Emergency Accommodation and 25,400 vacant homes⁸ throughout Galway, Mayo and Roscommon, there is a clear need for change.

A right to housing in our Constitution provides every level of Government with a guiding principle and a commitment to ensuring there are sufficient homes for all of our people. In practical terms, this means refusing to accept the endemic housing crisis in our society. It means a new level of respect for the levels of affordable housing and social housing needed. It means having sufficient levels of housing suitable for people's needs including housing with universal design for people with disabilities, catering to the housing needs of our ageing population, for members of the Travelling Community, and housing for small and large families alike.

Provide Funding for a Referendum on the Right to Housing in Budget 2023

The Simon Communities of Ireland recently launched our pre-budget submission.⁹ Our ten budgetary measures aim to increase housing supply for people in homelessness and on social housing waiting lists, prevent homelessness, and reduce poverty for low-income households. Budget 2023 is an opportunity for the State to commit fully to a referendum on the right to housing by ensuring sufficient funds are available. The Simon Communities estimate that the State will need to allocate €16.8million in Budget 2023 to facilitate a Referendum on the right to housing, based on costings for recent referendums.¹⁰

Conclusions

Galway Simon Community is deeply concerned about the deepening housing and homelessness crisis. Every day we support the people behind the statistics – individuals and families living with housing insecurity and in Emergency Accommodation. People in crisis. People who do not know if they will have a roof over their head next week, next month. People facing unaffordable rents. People who do not know if they will be placed in Emergency Accommodation miles from where their children go to school. People who have to make choices between food, heat and rent. We worry for the children whose families are experiencing the trauma of homelessness, and the long-term impact on those children.

The Simon Communities want to ensure that the people of Ireland have timely access to a referendum that will result in a right to home. To ensure the proposed wording leads to a meaningful constitutional change, the proposed amendment needs to create a balanced, stand-alone, and enforceable right to housing. Ideally, proposed wording from the Commission would build on the work already done in this area by Home for Good.

⁸ <https://www.cso.ie/en/releasesandpublications/ep/p-cpr/censusofpopulation2022-preliminaryresults/housing/>

⁹ <https://www.simon.ie/e-publication/pre-budget-submission-2023/>

¹⁰ <https://www.oireachtas.ie/en/debates/question/2022-02-15/321/?highlight%5B0%5D=expenditure&highlight%5B1%5D=referendum>