

**The Committee on the Administration of Justice (CAJ)
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***A submission to the Department of the Environment
(NI) on the Draft Local Government
(Northern Ireland) Order***

May 1997

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Introductory Comments

In its concluding observations on the United Kingdom's report in 1997, the United Nations Committee on the Elimination of Racial Discrimination welcomed the adoption of the Race Relations (Northern Ireland) Order 1997 and commented positively on the "special provisions relating to the Irish Traveller communities." It is most depressing for all those concerned with the rights of minority ethnic communities and particularly the Irish Travelling community, that the government is now proposing the instant legislation. Its apparent intent and impact will be to discriminate against the Travelling community, and to directly interfere with their right to pursue their own traditional lifestyle. We believe that the UN CERD will be equally dismayed by the legislation when it is brought to its attention during the next review of the UK's compliance with the Convention on the Elimination of Racial Discrimination.

The content of each of the (small) number of provisions in the Order needs little elucidation and so a recitation of the individual provisions is of little value. However, in three major respects the legislation conflicts with recognised and protected rights for Travellers.

Race Relations (Northern Ireland) Order 1997

1. It is of great concern that the government, in the same year as its final implementation of Race Relations legislation in Northern Ireland, almost immediately proposes this Order which arguably violates provisions of that legislation. This is particularly so when one considers that Irish Travellers were included as a protected group in the Race Relations Order.

While it is welcome that the expressly discriminatory aspects of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 have been removed, there is little doubt that the legislation as is currently drafted will amount to indirect discrimination in that it will impact almost exclusively upon members of the Travelling community. There is no evidence available of significant illegal camping by others. The Race Relations Order covers provision of goods, services and facilities (Article 21), and the disposal and management of premises (Article 22). It is therefore likely that decisions made by local authorities under the proposed legislation may be subject to successful challenge in the courts on this ground.

International Law

2. In the event that domestic challenges to the legislation are not successful, it is likely that prosecutions will be subject to review in the European Court of Human Rights. The legislation as it currently stands is potentially in conflict with Article 8 of the Convention which guarantees the right to respect for private and family life, home and correspondence. While there are grounds in Article 8 which allow for the interference with this right, we do not believe that the current legislation would be insulated from challenge on any of these grounds. Additionally, we believe that the Draft Order could fall foul of Article 2 of the First Protocol to the Convention. When one reads these articles in conjunction with Article 14 of the Convention (barring

discrimination in the securing of the rights under the Convention), the strength of any challenge is increased.

It is equally clear that the provisions as currently drafted may well fall foul of the International Covenant on Civil and Political Rights (Articles 12, 17 and 26), the International Covenant on Economic, Social and Cultural Rights (Articles 11, 12 and 13) and the International Covenant on the Elimination of Racial Discrimination (Articles 2 and 5).

Policy Appraisal and Fair Treatment Guidelines (PAFT)

3. CAJ would be interested to discover if these proposals were subjected to scrutiny vis a vis the government's own PAFT guidelines, and if so, to receive a copy of the PAFT report. We believe that if they had been, they would have been found to be discriminatory in impact, and contrary to the guidelines. PAFT attempts to ensure that new policies or the review of existing policies do not unjustifiably discriminate against specified sections of the community. One of those sections is distinguishable on the grounds of race. Therefore the discriminatory impact that this legislation will have on Travellers is contrary to the PAFT guidelines

Conclusion

CAJ are not persuaded by the argument outlined by the Explanatory Document accompanying the Draft Order that the courts in Britain have ensured that Councils have dealt with the needs of those to be evicted. What the courts in Britain have done is to ensure that local authorities there consider the content of circulars issued to them by the Department of the Environment. These circulars have reminded local authorities of their various statutory duties to house the homeless and of their responsibilities under the Children Act before using these powers. Failure to consider the contents of those circulars before proceeding would render a decision to use the equivalent powers in the 1994 Criminal Justice and Public Order Act unlawful. However, no such circulars apply to the best of our knowledge in Northern Ireland. Indeed, given that these statutory duties are placed elsewhere than on local authorities, it might not be possible to issue similar directions to local authorities. Therefore, the amelioration by the courts of the worst effects of the legislation in Britain, would not apply here.

We also believe that the Explanatory Document is misleading in its assertion that the Department intends to retain the 100% grant-aid for Councils to provide service sites. It is envisaged that the DOE Special Projects Budget, from which this revenue comes, will be reduced significantly in the coming years.

Overall, CAJ believes that the effect of this legislation will be to criminalise the traditional lifestyle of Irish Travellers and to reduce the facilities available to Traveller communities. The legislation, combined with the reduction in the budget available to local councils to provide sites to Travellers, will mean that local authorities will soon be asked to provide such sites out of their own budgets, or use the powers under the legislation to move Travellers on. It takes little imagination to predict which route the authorities will prefer.