
Increasing Access to Housing : Implementing the Right to Housing in England and France

Marie Loison-Leruste and Deborah Quilgars

Centre Maurice Halbwachs, Equipe de Recherche sur les Inégalités Sociales,
Paris, France

Centre for Housing Policy, University of York, York, England

- › **Abstract_** *The United Kingdom and France are the only two European Union member states to have introduced a right to housing that is enforceable through the courts. This paper investigates whether such a right to housing increases homeless people's access to appropriate accommodation. Focusing on England and France, it begins by outlining the difficulties in accessing social housing in each country before describing how a right to housing is operated within this context. The differing, but in both cases complex, governance arrangements for implementing this right to housing are reviewed. The paper concludes that a right to housing does have the potential to ensure that the accommodation needs of the most marginalised households receive greater priority than those without such a right. However, implementation challenges, including take-up issues, fragmented governance arrangements, competing social goals, such as social diversity, and an overall lack of housing may significantly restrict the impact of this right to housing.*
- › **Keywords_** *Right to housing ; access to housing ; social housing ; homelessness ; governance ; France ; England.*

Introduction

FEANTSA has for many years advocated a 'rights-based' approach to addressing homelessness across the EU. Key arguments for such an approach are the 'empowerment' it may afford to homeless people as well as the potential for delivering improved housing outcomes for homeless households (FEANTSA, 2005). Although the right to housing has been enshrined in international and European human rights instruments for over fifty years, the EU has tended to focus on policies designed more broadly to promote social inclusion rather than enforceable rights (Alston and Weiler, 1999; FEANTSA, 2005). Nonetheless, the Council of Europe has encouraged countries to develop a comprehensive and efficient legal framework on access to housing for disadvantaged people (Daly, 2002). A recent review of eleven Organisation for Economic Co-operation and Development (OECD) countries found that England¹ and France were the only two countries that had enforceable rights linked to the provision of *settled* housing for homeless households in specified circumstances (Fitzpatrick and Stephens, 2007). Other countries either had no rights to housing at all, had no legal mechanism to enforce any rights or enforceable rights were only in place for emergency accommodation.²

This paper investigates the potential for a right to housing to increase access to housing for homeless households, utilising the English and French experiences. Whilst the two countries both have a right to housing, their systems operate quite differently. As described below, the English system dates back to the 1977 Homeless Persons Act, which gave local housing authorities a duty to provide settled housing (usually discharged through social housing) to homeless households assessed to be 'in priority need' for housing. In contrast, a justiciable right to housing (DALO) was introduced in France thirty years later in the Act of 5 March 2007, replacing public authorities' best-efforts obligation with a performance obligation whereby certain categories of social housing applicants can apply for legal relief if they have been waiting for housing for 'an abnormally long time'.

Whilst it is outside this paper's remit to consider in detail the reasons for these countries developing a right to housing, there are some interesting parallels. Both systems were introduced at a time that homelessness was seen to be a growing and unacceptable social problem, rather than as a way to strengthen further a working system. In France media pressure via a campaign organised by the voluntary organisation, Les Enfants de Don Quichotte, is understood to have 'forced the government's hand' into enacting a law (Loison, 2007). Political will was not a

¹ Scotland, Wales and Northern Ireland also have enforceable rights to housing (see Anderson, 2007) but this study only included England from the UK.

² For example, there are rights to emergency accommodation for roofless households in Germany, Hungary, Poland and Sweden.

driving force, in contrast to the enactment of the Scottish homelessness system (Anderson, 2007). The development of the French system also owes much to the 'law culture' that is a key element of civil society. Moreover, the 'right to housing' has long been integrated into the French legal system as a fundamental right (Kenna and Uhry, 2006). However, only now is this right 'justiciable' in the sense that one can take legal action against a public authority for failing to fulfil its obligation to provide housing. The English system also partly developed following pressure group activity, backed by media attention, although over a more sustained period in the 1960s and 1970s (Pleace and Quilgars, 2003a). It also aligned with the political priorities of the Labour government in 1977. Perhaps due to differing legal traditions, the English system does not provide a right to an individual under the law, rather it places an obligation on local authorities to provide housing, therefore allowing individuals to sue a local authority if it does not abide by its obligations.

The English and French systems both rely on public authorities being able to identify appropriate housing for homeless people, primarily through the social rented sector. The social housing rented sector is of a similar size in both countries: Table 1 shows that between 17 and 18 per cent of households live in this tenure in England and France. Social housing has different histories in the two countries, however, with the sector growing over time in France but reducing significantly in England. English social housing has been described as providing a 'safety net' to households excluded from other options; whereas France's social housing sector is described as performing a 'wider affordability function' within the context of overall lower levels of poverty and more generous social insurance benefits and a different employment market (Stephens, 2008).

Table 1: Main residences in 2006 by tenure (% of households)

	England	France
Owners	68.3	57.2
Tenants	31.6	37.5
<i>Social rented sector</i>	17.7	17.1
<i>Private rented sector</i>	13.9	20.4
Other occupancy status (Non-paying lodger, furnished lets, subtenants)	Not available	5.3
Total stock of dwellings (in thousands)	21,000	26,280

Source: For Metropolitan France: INSEE, Housing Survey (2006); For England: Communities and Local Government (2008, Table 1).

This paper also seeks to demonstrate that governance issues are central to the effective workings of both systems, involving complex relationships between the central government, local authorities (at various different levels) and (social) housing providers, particularly in France. For example, it has been asserted that one of the

biggest problems for France in implementing the right to housing, alongside the prevailing housing shortage that led to the need for the legislation, relates to 'institutional disarray' arising from a decentralisation process that has created multiple tiers of government (Lacharme, 2008).

This paper outlines the role played by social housing in more detail, and the governance arrangements that deliver this housing, in both countries. The detailed aims and key features of the established English 'right to housing' and the new DALO system in France are then compared. It considers the key challenges to ensuring that this right to housing leads to demonstrable improvements in housing for homeless households. Finally, it examines the extent to which a right to housing ensures better accommodation outcomes for homeless households, including a comparison of change over time and the different outcomes in the two countries.

Access to Social Housing in England and France

England

Successive British governments over the last thirty years have promoted the growth of homeownership and, at the same time, presided over policies that have reduced the social rented sector. Whilst the social rented sector represented around 30 per cent of national housing stock in 1979, policies such as the Right to Buy,³ coupled with large-scale cutbacks in new social housing developments, led to a shrinking of the sector to 17.9 per cent of national stock by 2006. This housing can be roughly subdivided into the local authority sector (9.5 per cent of national stock) and housing association⁴ stock (8.4 per cent).

The social rented sector's primary role in England is to accommodate those who find it difficult to access private housing, aiming to provide quality housing and usually at below-market rents (Hills, 2007). However, there is a tension in English housing policy as it acknowledges that those in the greatest housing need should be given priority for social housing but at the same time there may be exceptions to this for 'wider community benefit' (DETR and DSS, 2000, p.80). This tension has grown as the sector has shrunk and now comprises a growing proportion of workless and low-

³ First introduced in 1980, the Right to Buy scheme gives eligible council tenants the right to buy their property from their council at a discount. Some tenants of housing associations also hold the preserved right to buy (as they previously held secure tenancies with local authorities).

⁴ Housing associations are independent societies, bodies of trustees or companies established for the purpose of providing low-cost social housing for people in housing need on a non-profit-making basis. Any trading surplus is used to maintain existing homes and to help finance new ones. In England housing associations are funded and regulated by the Tenant Services Authority, a non-departmental public body that reports to the government.

income households (Hills, 2007). The system of housing benefit for social tenants generally means that 100 per cent of rent is paid for those unemployed (with tapered provision at 65 per cent for those with low incomes/in part-time work).

The main method of allocation of social housing is via an assessment of need. Local authorities have to publish their allocation policies, and legislation (Section 167 of the Housing Act 1996, amended by the Homelessness Act 2002) states that the scheme must give 'reasonable preference' to four main categories of applicant: homeless people (see next section); people living in unsanitary, overcrowded or otherwise unsatisfactory housing; those who need to move on medical or welfare grounds; and those who need to move to a particular area to prevent hardship (to themselves or others).

Until recently most local authorities operated a 'points-based' allocation system based on housing need.⁵ Choice-based letting (CBL) schemes are also currently being rolled out across England with the aim of facilitating greater housing choice by allowing housing applicants to view details, make a choice and then 'bid' for general needs lets from social landlords in a local area (within an overall framework that recognises differing levels of need). Research suggests that homeless households have been more likely to be housed in a wider range of stock, and in more dispersed patterns, under this system (Pawson et al., 2006).

Local authorities and housing associations normally work together to deliver social housing in any one area. It is usual for several or all of the housing associations, along with the local authority, to operate one CBL system. Apart from CBLs, social housing providers have also tended to operate housing registers, which pool properties from a number of providers under one scheme. However, some housing associations continue to work independently and a household is likely to be able to apply to more than one provider in any given area.

Housing associations, as well as other voluntary sector organisations, are also key providers of housing with support for homeless households. During the 1990s it was recognised that a significant minority of homeless households needed support to enable them to manage a tenancy (Pleace and Quilgars, 2003b). Introduced in 2003, the Supporting People programme in England (and wider UK) provided funding, via 150 administering authorities, to charities and housing associations

⁵ Applicants accrued 'points' for different needs, for example for medical conditions and/or unsatisfactory present housing.

and other agencies (including local authority providers) to provide housing-related support to vulnerable households.⁶ This support most commonly takes the form of supported accommodation⁷ or 'floating support' to social housing.

Accessing social housing has become increasingly difficult over time. Low levels of new social housing, plus loss of houses through sales to existing tenants, has meant that a smaller stock is available for potential new tenants. There were only 15,521 social housing starts in 2007, compared with over 108,000 in 1970 (with local authority starts reducing from 100,000 to 200 over this period). The turnover of lets has also decreased over time due to affordability issues and demographic profile change. By 2006/7 there were 222,000 new social lets per year in England compared with a high of 371,000 in 1997/8. In 2006/7, 28 per cent of all social lettings to new tenants were to homeless households, reduced from 34 per cent in 2002/3.

France

Social housing is defined slightly differently in France than it is in England, covering both the social rental stock and agreement-regulated private stock (Solidarity and Urban Renewal Act 2000 – SRU Act). There are three types of social housing operator in France: the Union Social pour l'Habitat (USH), which links together nearly 820 low-rent social housing organisations (HLMs),⁸ the semi-public corporations (SEM)⁹ and the agreement-regulated private housing providers.¹⁰ The bulk of the social rental housing in France is built and managed by HLM operators. Today, ten million people (about one in six) live in four million HLM dwellings. Seventy per cent of French households qualify for HLM properties, although half the families housed by the sector are among the poorest third of the French population. In addition to HLMs, voluntary agencies also produce their own social housing, which is essentially intended for the poorest families, for which there is a specific scheme of help and loans (see below).

But social housing is not all about the public stock. A large section of the private rental stock is regarded as social as it involves a landlord signing an agreement with central government in exchange for financial help to build or carry out works

⁶ In 2009/10 the 'ring-fence' around this funding was removed (although the grant was still named Supporting People); from 2010/11 the funding will formally become part of Area Based Grants provided by national government to each local authority.

⁷ This is usually a temporary provision for homeless households, though permanent placements are also available for those with long-term support needs.

⁸ Not-for-profit statutory bodies, public limited companies or co-operatives.

⁹ Commercial companies in which one or more local government agencies or public benefit groupings have a financial and management involvement.

¹⁰ Agreement-regulated means rent-controlled and subject to a tenant's income cap. In the case of agreement-regulated low-income or very-low-income housing, tenancies may be granted to a public or private legal entity to sublet or otherwise provide homes.

in a property. This agreement creates a statutory tenancy and an entitlement to housing subsidy for qualifying tenants. The social cohesion plan aims to expand the share of agreement-regulated housing as part of the strategy to tackle the current French housing crisis.

The purpose of the social housing stock is to house 'low-income or disadvantaged individuals' (section 55 of the Anti-Exclusion Act of July 1998). Resource caps (based on household composition), controlled rents and geographical location are the main criteria for allocating social housing. Some groups of applicants have priority (disabled people, families with a disabled dependant in unsafe or unfit housing). Homes are allocated by social landlords via a committee that includes local council and tenants' association representatives. Certain bodies (which contribute to the funding of accommodation) have the right to propose a certain proportion of applicants, including the 'prefecture' of the department (for both disadvantaged people and civil servants), local authorities or private companies (La Poste for instance).

Until recently French housing policies were primarily concerned with urban development rather than housing exclusion, to address the post-war housing shortage. However, the 1990s brought new problems, with tenants stuck in large housing estates, prefabricated temporary housing turning into permanent homes and lengthening social housing waiting lists. The main response to this was the development of 'very social housing' stock which imported 'social welfare practice' into the housing sphere (Ballain, 2002, p.11).¹¹ These schemes reflect a social assistance approach, run mostly by voluntary organisations, with part-finance from central government, to provide temporary homes with or without social support. It has been argued that this proliferation of stopgap solutions undermines the right to housing because, far from expanding the supply of affordable housing, it increases the number of non-standard situations and affords no real answers to people excluded from 'ordinary' housing (Lévy-Vroelant, 2006).

Although the number of new housing starts has risen each year since 2004, it has been estimated that public spending on housing is at its lowest level for thirty years (Fondation Abbé Pierre, 2009). There were 425,000 new housing starts in 2007 and the share for the lowest income groups (for means-tested tenancies) was 153,000, just 36 per cent of the 2007 output. Furthermore, the number of 'assisted social rent loan' homes, which the poorest families cannot afford, is rising faster than the output of more affordable properties for the lowest income families (via 'social housing construction loan' and 'subsidised inclusion rent loan' homes). The number of agreement-regulated tenancies has increased since 2005, but of these, the 'very low-income' tenancies almost halved in 2006.

¹¹ The 'very social housing' includes people who have no legal tenancy status.

Access to social housing is therefore beset by major difficulties that add up to a 'housing crisis'. It has been estimated by the government that over one million people living in approximately 600,000 homes are likely to be inadequately housed (Fondation Abbé Pierre, 2009). Rising housing costs and the gradual decline in the low-rent private stock (brought about by the national urban renewal plan¹² and the policy of social diversity) between 1988 and 2002 increased the importance of social tenancies and social housing and widened the gaps between private and social tenancy rents. Similar to the English context, limited mobility prospects are also an issue, social low-rent tenants are forced to stay in social housing stock, which further widens the social divide in certain disadvantaged urban neighbourhoods or areas.

Governing the Right to Housing

England

The legislative framework for homelessness was established in the Housing (Homeless Persons) Act 1977 and subsequently incorporated into the Housing Act 1985, Housing Act 1996 and most recently the Homelessness Act 2002. Under the legislation, local authorities must ensure that accommodation is made available to certain categories of households that are 'eligible' (certain 'persons from abroad' are ineligible) and 'homeless' (those without any accommodation in the UK and those who cannot gain access to their accommodation or cannot reasonably be expected to live in it, for example, because of a risk of violence). Households also need to be assessed as being in a 'priority need' category, the main ones being households with dependent children; pregnant women; adults who are 'vulnerable' because of old age, mental illness or disability; those belonging to a specific group (e.g. sixteen or seventeen year olds); and those homeless as a result of an emergency such as fire or flood. Households also have to demonstrate that they are not 'intentionally' homeless and that they have a 'local connection' to the local authority. A summary of the key elements of this homelessness legislation, and the French system, is presented in Table 2.

If a household is eligible, in priority need and unintentionally homeless, it is provided with temporary accommodation until 'settled' housing becomes available. Temporary accommodation is generally provided in ordinary houses or flats through leasing arrangements with private landlords or in local authorities' own stock or housing association stock, though a small proportion (8 per cent in March 2008) are given a hostel place or bed and breakfast accommodation.

¹² Passed in 2003, a programme to renovate the most depressed districts and most dilapidated housing.

Levels of homelessness acceptances have fallen in recent years in England from over 100,000 households in the early to mid-2000s to 63,170 in 2007/8. The primary reason for this is believed to be the change in the approach by local authorities from one of responding to housing emergencies towards one of prevention (Busch-Geertsema and Fitzpatrick, 2008). Local housing authorities are now required to produce homeless strategies that include their approach to preventing homelessness. There is an attempt to identify potentially homeless households early and provide them with services that will prevent homelessness (e.g. tenancy sustainment services), as well as an emphasis on working with (potentially) homeless households to review their housing options (e.g. by supporting a move to a private rented tenancy). Despite a reduction in the number of homelessness applications the number of households in temporary accommodation has remained relatively high, indicating persistent difficulties in rehousing households into settled housing, although there have been some modest falls since 2005.

The homelessness legislation provides for a two-stage appeal mechanism under public law principles. Applicants are entitled to an internal review of their application within twenty-one days of the first decision. They can also lodge a statutory appeal to the County Court (on a point of law). Homeless applicants can also challenge certain local authorities' decisions under the legislation via judicial review through the courts – this includes cases where a local authority has refused to accept a homelessness application.

Settled housing can be found by the household itself or by the local authority. In practice, housing is almost always secured by the local authority and is usually discharged via the offer of a social rented tenancy. Whilst local authorities hold the responsibility, they are expected to work with other housing providers to address homelessness in their local area. In particular, local authorities are reliant on effective partnership working with housing associations given the latter's expanded role in the social rented sector.

Up until the mid-1990s those found statutorily homeless were usually rehoused in council housing, however, this became more difficult due to increasing levels of homelessness, and a shrinking council sector following both the sale of houses (primarily via Right to Buy policies) and the transfer of council housing to alternative forms of ownership. In the early 1990s a policy of large-scale voluntary transfer (LSVT) was introduced, which gave local authorities financial incentives to 'transfer' the ownership and management of council housing to third sector housing associations. Although initially this policy was slowly taken up, increasing incentives generated greater interest and by 2006 about 45 per cent of local housing authorities had transferred their stock to housing associations (Pleace et al., 2007). Traditional

housing associations also have their own housing stock, however, LSVT housing associations are usually the predominant, if not the only, form of social landlord in an area and are therefore key to local authorities in their discharge of responsibilities.

During 2005/6, 21,470 general needs lets¹³ were made to statutorily homeless households in housing association stock, representing approximately one-third of all the households accepted as statutorily homeless in England (Pleace et al., 2007). Housing associations are required, under the current Tenant Services Authority/Housing Corporation Regulatory Code,¹⁴ where reasonable, to provide a proportion of their stock for local authority nominations, with guidance that 50 per cent or more of housing association true voids¹⁵ should be made available in areas with housing stress (and 75 per cent in London). It is also expected that nominations agreements are in place between local authorities and housing associations. However, research shows housing associations vary considerably in the proportion of housing that they provide to homeless households. LSVT associations generally make higher rates of general needs lets to statutorily homeless households than traditional housing associations, but the number of lets can vary between one and 56 per cent (Pleace et al., 2007). Housing associations also rejected some 2,490 nominations and bids from statutorily homeless households in 2005/6, about 10 per cent of the homeless households housed by the sector.

Housing associations are required to make a proportion of their stock available to provide temporary accommodation for homeless households. In practice, some housing associations are more involved in this than others (Pleace et al., 2007), sometimes reflecting different local needs. Working partnerships are also required between housing providers and housing-related support providers to ensure that households are adequately supported to ensure tenancies do not break down.

Partnership working in tackling homelessness also relies on effective links with the private sector. Local authorities (and housing associations) have for a number of decades leased properties from private landlords to provide temporary accommodation for homeless households. However, more recently, local authorities have begun to offer some homeless households a private tenancy instead of a social rented tenancy. At present, households have no obligation to accept the offer of a private tenancy and this offer does not represent a discharge of a local authority's duty under the homelessness legislation (as private tenancies almost always consist of assured shorthold tenancies of six to twelve months and therefore are not

¹³ General needs lets include all houses and flats/apartments that are ordinary housing without any support services attached.

¹⁴ Regulatory Code available online at: www.housingcorp.gov.uk/upload/pdf/RegulatoryCode.pdf.

¹⁵ True voids are tenancies available for re-let that represent a housing gain (i.e. they exclude transfers and mutual exchanges between existing tenants).

considered 'settled' housing). However, there is considerable momentum in policy arenas to change this requirement to make it easier for local authorities to discharge their duty via rehousing in the private rented sector.

France

The enforceable right to housing (DALO) Act, establishing the justiciable right to housing as well as other social cohesion measures, came into force on 1 January 2008 (also see Table 2). This right to housing is open to applicants who are French citizens or lawfully living in France and are unable to access and remain in decent housing of their own with their own resources, and qualify for social housing under the regulations. Usually with the help of a social worker, they can appeal if they fall into one of three situations:

- They have applied for social housing and not been offered suitable housing after an abnormally long time (which is fixed by the prefect and varies between departments).
- They are:
 - unhoused (homeless or staying with someone);
 - under threat of eviction with no possibility of rehousing;
 - living in a hostel for more than six months or temporarily living in move-on housing for more than eighteen months;
 - living in premises that are not meant for habitation, are substandard or dangerous; or
 - living in overcrowded or indecent premises (because of having a child or disabled dependant, or being themselves disabled).
- They have applied for a place in temporary accommodation and been made no appropriate offer in reply to their application.

Two types of appeal are open to applicants for housing or accommodation. Since 1 January 2008 a negotiated settlement can be sought from mediation committees¹⁶ established in each department. The committees have no power to rehouse, but have to notify the prefect of the department within three months (six months in the larger departments) of the households that are considered priority cases along with a recommendation of how the housing need should be met (e.g. they may find a case to

¹⁶ Mediation committees are made up of representatives of central government, landlord organisations, shelters, move-on facilities or housing, hostel and welfare hotel management organisations, sub-national government agencies (department, district associations and local councils) and tenants' associations and approved voluntary agencies whose objectives include integration or housing of disadvantaged groups.

be a priority but consider that an offer of temporary accommodation would be most suitable). For the right to short-term accommodation, the mediation committee has six weeks to rule on the appeal. The prefect will consult the local authorities, take social diversity objectives into consideration and refer applicants to a landlord or offer a place in short-term accommodation provision or appropriate housing. If the landlord rejects the applicant, the prefect may allocate housing directly from the reserved 'prefectoral quota'. Agreement-regulated private sector housing can also be offered if specific allocation criteria have been set or the property is on lease to an organisation for subletting to a priority applicant. Applicants cannot refuse the housing offered without forfeiting their right to housing. At this point, no remedy yet lies against the central government under the DALO Act if the mediation committee's decision is not acted upon. On the other hand, mediation committee decisions can be challenged through the ordinary procedures in the administrative court in the same way as any administrative decision.

A second type of appeal applies to households that have not been offered housing within three or six months of the committee's decision. This procedure came into effect on 1 December 2008 for priority applicants and will be available from 1 January 2012 for those not considered priority cases by the mediation committee. Here, the applicant can file an 'appeal for judicial review' to the administrative court which must give an emergency ruling within two months. Where the application is for short-term accommodation, an applicant can file this appeal if he or she has received no offer within six weeks of the committee's decision. The administrative court can then order the government (via the prefect) to (re)house the applicant, from the prefectoral quota, in agreement-regulated private stock or in temporary accommodation if that is felt to be more appropriate. It can also make its order subject to a daily default fine, the proceeds of which are paid into the regional urban development fund to finance social housing.

The DALO Act was drafted and passed as an emergency measure in early 2007 in response to media headline-grabbing events that stirred French public opinion (see Loison, 2007). Due to the short timescales involved, the Haut Comité pour le Logement des Personnes Défavorisées (2008) suggested the creation of a monitoring committee to carry out a consultation, evaluate the implementation of the Act and put proposals to the government. Through this process, it was identified that local government responsibilities with regards to housing supply need to be better defined to ensure that appropriate provision is in place. The prefectoral quota was found not to be big enough to satisfy all priority applications, especially in large towns and cities and in some departments or regions (e.g. Île-de-France). Central government therefore needs to enter into agreements with private owners to ensure that priority families are actually housed. The Haut Comité also called for unhealthy, hazardous or indecent housing to be improved to prevent occupants being rehoused to HLM homes. Finally, it was noted that the implementation of the justiciable right to housing will demand a substantial increase in the housing budget.

Table 2: Key elements of the right to housing, England and France

	England	France
Who does the legislation cover?	Categories of households 'eligible', 'homeless' and in priority need: households with dependent children; pregnant women; adults who are 'vulnerable' because of old age, mental illness or disability; those belonging to a specific group; those homeless as a result of an emergency such as fire or flood. They also have to demonstrate a 'local connection' with the local authority and that they are not 'intentionally' homeless	French citizens or people lawfully living in France, unable to access and remain in decent housing of their own with their own resources, qualify for social housing under the regulations
Who is responsible?	Local housing authority has the duty to provide settled housing for accepted households Policy directives request housing associations to assist local authorities to meet their duty	Central government (prefect)
What level of demand is expected?	No expected number but demand expected to decrease due to more proactive homelessness prevention policies	In October 2008: 100,000 appeals expected. 600,000 households could lodge an appeal
How many households are accepted?	63,000 (2007/8)	In October 2008: 50 000 appeals lodged ≈ half households rehoused
How does the household apply?	Directly to the local housing authority office	At present a social worker in associations or local authorities makes the application for the applicants and sends it to the social committee
What is provided to eligible households?	'Settled' housing has to be provided to eligible households, and temporary accommodation must be provided until this is found (this may include households who agree to stay in the present accommodation, referred to as 'homeless at home' households)	Settled housing but there is the possibility of providing temporary accommodation instead of permanent housing
Nature of legal redress if housing not provided	Applicants are entitled to an internal review of their application within twenty-one days of the first decision. Applicants can also lodge a statutory appeal to the County Court (on a point of law). Certain decisions can also be challenged via judicial review through the courts	If housing is not provided after the 'negotiated settlement', applicants can make a second appeal, the 'appeal for judicial review' to the administrative court The administrative court can then order the prefect to (re)house the applicant from the prefectural quota, in agreement-regulated private stock or in temporary accommodation. It can also make its order subject to a daily default fine

Challenges to the Implementation of the Right to Housing

Although the right to housing operates quite differently in France and in England, the implementation of this legislation has raised a number of similar issues and problems in the two countries.

Problems with housing supply

With the DALO Act, it is calculated that about 450,000 new homes a year are now needed over the period 2005 to 2010. The Fondation Abbé Pierre (2009, p.155) argues that 'a production of less than 500,000 homes a year over the period makes it highly likely that the right to housing cannot become exercisable'. However, nowhere near these numbers are being built and there is a mismatch between housing supply and needs. It has been noted that the prefectural quotas could not make more than 60,000 homes a year available at most, whilst up to 600,000 households could eventually lodge an appeal (Fondation Abbé Pierre, 2009, p.8). These breakdowns in the system evidence what Lévy-Vroelant (2006) has called 'the limits of the policies for implementation of the right to housing'.

Voluntary organisations fear that unless rehousing is offered, claimants will simply be bounced into hostels or short-term accommodation, or even the most dilapidated housing. There is a concern that the right to housing may turn into a right to short-term accommodation, with this risk heightened by the administrative court's power to offer short-term accommodation to an applicant granted priority housing status by the mediation committee. One leading voluntary organisation commented:

FNARS takes issue with the fact that mediation committees can offer short-term accommodation to applicants for housing. It is an unacceptable shift towards a justiciable right to short-term accommodation. Where there is a housing shortage, the mediation committee might be prompted to offer short-term accommodation because there is no permanent housing. A lack of housing supply in an area must not in any circumstances serve as an excuse for not acknowledging an applicant's priority status for housing. Short-term accommodation cannot be a substitute for housing! (FNARS, 2008, p.5)

Ultimately, in the French context, the problem lies in the lack of a detailed national picture of the supply of housing. Many have called for a joined-up, area-based system to keep track of the volume and type of housing needs (FNARS, 2008). Commentators assert that fundamentally there is a crisis in policy (Lévy-Vroelant, 2006; Mouillart, 2007), with a lack of political will to address the long waits for rehousing, evictions and empty properties.

In England there is also a severe problem with housing supply (Barker, 2004). This has been acknowledged at national level with the 2007 housing Green Paper aiming to increase social housing production to 45,000 units per year by 2010/11 and 50,000 per year thereafter (CLG, 2007). Overall, the government has a target of increasing housing production from 150,000 to 200,000 units per year over the next decade. However, the operation of the homelessness legislation is affected in different ways by housing supply problems in England compared with France. The duty on local authorities to provide settled homes to eligible homeless households does not allow them to discharge their responsibilities through temporary accommodation.¹⁷ Nonetheless, the impact of limited social stock is to lengthen the period of time that many households have to wait in temporary accommodation before being allocated a permanent tenancy. This impact is felt disproportionately in different parts of the country, with waits of over two years not uncommon in constrained housing markets such as London's (Pleace et al., 2007). The limited social housing supply has also fuelled calls to allow local authorities to discharge their duties by the allocation of private sector tenancies. Whilst legislation has not been amended to allow this yet, it is a possible future development and it would effectively dilute the right to housing from a secure tenancy to a time-limited private let.

Meeting housing needs or promoting social mix ?

Housing policies throughout Europe increasingly attempt to promote 'social mix' or 'balanced communities' in order to foster social cohesion and prevent the development of neighbourhoods characterised by a 'poverty of place' (Fitzpatrick, 2004). Although academic debates continue as to what actually constitutes a balanced community (Galster, 2007), the main aim of the policy is to prevent a spatial concentration of marginalised people in any one location. Whilst promoters of this policy argue that this reduces social stigma and promotes social justice, it may also result in blocking poor people's access to certain segments of the housing market (Busch-Geertsema, 2007).

In France the Urban Planning (General Principles) Act of 13 July 1991 approaches social diversity as a means of reducing exclusions and the 'social divide'. France's country-wide policy uses housing acquisition and improvement policies to bring down barriers, avoid the stigma of social housing and avoid ghettoisation in target districts. However, the success of these policies is open to question as immigrants and people living in poverty tend to be segregated into certain districts (Maurin, 2004). There is also a creeping top-down ghettoisation where the French upper middle classes attempt to ring-fence certain areas from 'invasion' by other social

¹⁷ The Housing Act 1996 in England reduced local authorities duty to one of providing temporary accommodation for two years but this was later repealed by the Homelessness Act 2002.

groups (Pinçon and Pinçon-Charlon, 2007).¹⁸ Section 55 of the SRU Act also requires local councils to have 20 per cent social housing to prevent poverty clusters forming. The DALO Act extends this statutory requirement to a further 273 local councils. In reality, however, some local authorities would rather pay the fine for breaching their statutory duty than house groups that are 'undesirable' to the other residents. Others have little choice but to pay the fine because of the housing shortage in their area. Local councils have a right of reservation over allocations to the social housing in their area, whilst the requirement of social mix and the reference to diversity (Exclusions Act) are weak laws.

The DALO Act also raises questions about the priority criteria for applications: there are non-DALO priority housing applications on file that are now competing with DALO case files, including emergency cases. The new legislation has therefore added another priority category for accessing social housing: there are fears that the increasing number of criteria could result in DALO applicants being stigmatised and discriminated against, and throw the universality of the new right into question. The success rate of appeals is also low. At the end of October 2008, 45 per cent of the case files considered had been approved and 47 per cent rejected, with a higher approval rate for appeals relating to housing than to short-term accommodation (raising a question about the options for short-term accommodation open to applicants who have not been assigned priority status). The approvals rate also varies by category of applicant and by region.

Finally, DALO implementation is very much based on using the prefectural quota of 60,000 families a year, but with an estimated 600,000 potentially priority households, the enforceability of the right to housing could end up in practice as a reshuffling of priority cases in waiting lists, and referrals towards short-term accommodation or housing provision. The Fondation Abbé Pierre (2009) fears that the 'use of the prefectural quota could also end up increasing the social specialisation of the HLM stock and worsening segregation between areas'. Households that qualify for the DALO could be steered towards the most decrepit parts of the social housing stock, running directly counter to social diversity policies and quickening the rate at which the social low-rent stock turns into poverty housing.

In England it has been shown that a reduced social housing sector has concentrated poverty rather than dispersed it (Hills, 2007) and there remains a trend towards more socio-spatial segregation rather than less (Dorling et al., 2007). English housing and welfare policy is increasingly being developed on the assumption that concentrations of poverty and worklessness in any one area impede the development of 'strong and prosperous communities' (CLG, 2006). Planning policy places an obligation on spatial strategies at regional, local authority and site levels

¹⁸ Some commentators suggest that this is also starting to occur in the UK (Atkinson, 2009).

to plan for a mix of housing. Social landlords, including both local authorities and housing associations, are increasingly expected to promote sustainable communities at the same time as meeting the housing needs of marginalised groups:

Tackling homelessness is not just about providing accommodation for homeless households accepted by local authorities. It is also about building sustainable, mixed and balanced communities. Balanced communities help promote social cohesion and equality, avoiding concentrations of deprivation and addressing social exclusion and community cohesion. (Housing Corporation Strategy Tackling Homelessness, 2006, p.10)

Recent research has shown that housing associations are often resistant about housing statutorily homeless households, particularly without support being in place, on the basis that these households will undermine their capacity to build and sustain cohesive and socio-economically mixed communities (Pleace et al., 2007). There are also general concerns about pushing up the numbers of economically inactive households within neighbourhoods or specific developments:

If we are getting homelessness applicants all the time through the nominations and if we have only a small estate in an area, it will gradually fill up with those people and become difficult to manage, difficult and expensive to maintain... (housing association respondent in Pleace et al., 2007)

Both the French and English experiences suggest that a right to housing may be more difficult to operationalise in a context where there are other competing policy priorities. This may be particularly the case where the housing law is weak (as in the French case). In contrast, a stronger law means that homeless households in England have to be rehoused, however, there may be challenges around whether the local authority or third sector providers rehouse these households.

Accessing the right to housing : Information, procedures and take-up

Part of the effective implementation of any social policy involves ensuring that those targeted for assistance are able to take-up the support offered (Titmuss, 1968). This relies on a number of factors, including potential applicants having information on their rights and systems that are easy to access for applicants (without agency 'gate-keeping' provisions or complex and/or intrusive procedures).

In the French case there have been a very low number of DALO appeals lodged relative to the estimated number of eligible households. By October 2008, ten months after the Act was introduced, some 50,000 appeals had been lodged compared with the 80,000 to 100,000 expected (Fondation Abbé Pierre, 2009, Table 2). The reasons for this are unknown; it is possible that the original calculation was inflated or that many households in need have decided not to lodge an appeal

(e.g. due to stigma, delaying seeking help or resolving issues through reliance on family or friends). There were also wide geographical differences, largely reflecting differing levels of housing deprivation, with two-thirds of the appeals lodged being in the Île-de-France and 90 per cent in six regions, while some departments had fewer than ten appeal case files lodged. The Fondation Abbé Pierre argues that the low number of appeals is partly due to potential applicants not being fully informed – the ministry published a leaflet (also put on the Internet) and sent information to department housing information agencies and the odd government agency, while documents and forms were sent to a few partners for passing on to the target groups, but there was no real communication policy, especially on how to lodge an appeal. Secours Catholique and Fondation Abbé Pierre tried to remedy this by setting up a mobile outreach team (the ‘DALO bus’) to promote the justiciable right in nine towns across France. An information website was also created (www.infodalo.fr). However, overall it is likely that many people eligible for the DALO will not be adequately informed to lodge an appeal.

In addition, the appeal procedures are very complex, making it difficult to put together case files for vulnerable groups and to know who is able to help them to appeal. Further, some departmental authorities set their own lists of required paperwork for appeals in order for a case to be procedurally admissible. There is also a clear inconsistency between the DALO eligibility requirements and those for accessing HLM housing. The bodies authorised to help applicants were given no training or additional resources to help them deal with requests. While Section 7 of the Act requires applicants to be assisted by a specifically approved voluntary organisation, few agencies have applied for approval as this would mean a significantly increased workload without additional resources (Fondation Abbé Pierre, 2009). In effect, this means that lodging an appeal is likely to be a difficult procedure for many potential applicants.

In England, following many years of operation, the homelessness legislation is well-known by most agencies that may refer an applicant to a local authority, although the level of knowledge of potential applicants may be more variable.¹⁹ While NGOs in France have been given no new funds (and the prefect quota has also remained the same), local authorities in England receive public monies to carry out their duties. They are required to process all the relevant paperwork so this should not be a barrier to a homelessness application. However, there are two issues of concern that potentially impact on take-up of the right to housing. First, research suggests that some homeless households may be put off applying due to the stigmatising experi-

¹⁹ For example, a recent survey of homeless families (Pleace et al., 2008) found that 40 per cent of applicants approached the housing department for general help but without knowing that they were going to apply as homeless.

ence of applying as homeless. In particular, young people have reported that they often feel confused, misunderstood and/or powerless, and sometimes intimidated, when navigating the homelessness system (Quilgars et al., 2008). Second, whilst the homelessness prevention agenda has been widely welcomed, there have been some concerns about the 'gate-keeping' of services by local authorities. Under a new 'housing options' approach, households are interviewed and offered advice on the full range of housing and support options, including services such as family mediation or the rent deposit guarantee scheme, designed to prevent the need to make a homelessness application. This approach is generally seen as the right way forward to addressing homelessness but some local authorities are so committed to this approach that they may sometimes discourage or block people from making a homelessness application (Pawson and Davidson, 2007).

The fragmentation of housing responsibilities

In France decentralisation and fragmentation of responsibilities are casting uncertainty over the outcomes of the right to housing policy. As far back as 2005 Fondation Abbé Pierre pointed out that central government was outsourcing the implementation of social housing construction and social diversity objectives to social communities without creating obligations. Fondation Abbé Pierre's 2009 report again emphasises that the local enablers without whom the DALO cannot be implemented are not doing enough. In addition, whilst the statutory performance obligation lies with central government, it is the local authorities that are in fact responsible for urban planning policy and financing social housing:

The allocation of housing responsibilities reveals the wide and likely widening gap between a demanding State which has a performance obligation but no real means to perform it, and the first line players (local authorities, social low-rent housing operators) who have the tools to act with but are not under the cosh of a penalty. (Fondation Abbé Pierre, 2009)

Further, the daily default fine imposed by the administrative court in an appeal for judicial review to force the central government to execute its judgement is optional, and so waters down the state's performance obligation. Both housing and short-term accommodation policy (Dyb and Loison, 2007) illustrate the more general difficulty of orchestrating public policy interventions:

France can be divided into five or six area-specific tiers, each of which has a housing responsibility. This division of responsibilities is a requirement of equity and creates a manifest difficulty in running public policies. (Uhry, 2008)

In England the operation of the homelessness legislation has increasingly relied on effective partnership working between housing providers as the housing association sector has grown and taken on some of local authority responsibilities, particularly following housing stock transfers. This means that the statutory authority for the delivery of both the housing strategy and homelessness legislation often does not house the homeless household directly. Research has shown that housing associations often do not have a central role in the development of housing strategies and that views on the success of partnership working between local authorities and housing associations in tackling homelessness are mixed, for example only 42 per cent of local authorities report that this works 'quite' or 'very' well (Pleace et al., 2007). Some housing associations feel that their autonomy as independent housing providers is being undermined by the expectations of local housing authorities and that they are being made to take more than their 'fair share' of statutorily homeless households (Pleace et al., 2007). Whilst miscommunication and lack of trust is not typical of all relationships in the social sector, it has the ability to undermine the smooth operation of the homelessness legislation. However, the fact that the local authority has a duty to find settled housing for a homeless household ultimately means that accommodation will be found for the applicant, but makes the job of the local authority more difficult. Overall, governance issues appear to be less of a problem in England when compared with France due to less complex structures.

Conclusion

It is important to note that a rights-based approach is not necessarily the best or only way to achieve positive housing outcomes for homeless households (Fitzpatrick and Stephens, 2007). For example, Ireland has adopted a consensus-based 'social partnership' model (O'Sullivan, 2008), which has demonstrated that alternative governance arrangements can also lead to successful outcomes for homeless households. Similarly, countries may successfully adopt inclusive housing policies (addressing the supply and affordability of housing options) that enable the vast majority of householders to secure housing without recourse to statutory mechanisms (e.g. Denmark). It could be argued that a right to housing may therefore be of a higher priority in countries with poorer overall housing provision. It is interesting to note that the right to housing was introduced in both France and England at times of a perceived crisis in homelessness, where a radical approach was seen as urgently required by pressure groups and in media campaigns.

The introduction of an enforceable right to housing in both France and England has been associated with increased positive outcomes for eligible homeless households (as well as to households that fall outside the legislation). In England the more established homelessness legislation rehuses thousands of homeless households

each year (63,000 in 2007/8). Importantly, recent research has also shown the benefits of the system in terms of improved outcomes for homeless families who had been rehoused, including better housing standards, health and overall quality of life (Pleace et al., 2008). In France the numbers of people helped by the DALO Act to date has been less than expected, rehousing 4,159 households in housing or short-term accommodation by October 2008. However, it has also helped to overcome the invisibility around those suffering housing deprivation, who had hitherto been largely disregarded in policies on housing exclusion. Likewise, the nature and effects of the housing crisis are clearer to see through the DALO appeals lodged by households in difficulty. It also gives better information to those working against housing deprivation and helps them hold the central government, local government and social and very-low-income housing operators to account over their obligations (Fondation Abbé Pierre, 2009).

This paper has highlighted a number of challenges to the successful implementation of a right to housing, including take-up issues, fragmented governance arrangements, competing social goals such as social diversity, and an overall lack of housing that significantly restrict the impact of any right. In the English context it can be argued that an enforceable right to housing provides a strong and effective framework for prioritising the housing needs of the most vulnerable. This confirms previous research that having homelessness legislation in place, along with an appropriate framework for the allocation of social housing, can make it more difficult for social landlords to exclude the most vulnerable households from the social rented sector stock (Stephens et al., 2002). However, a comparison of the French and English systems also highlights how important it is for this law to be a 'strong' one, ensuring that the responsible authorities have to find settled housing for applicants (as well as the system being accessible to applicants). In November 2006 FEANTSA lodged a collective complaint to the European Committee of Social Rights²⁰ arguing that, 'Despite ambitious laws and policies, France had failed to effectively implement the right to housing for all, especially for the most vulnerable' (FEANTSA, 2008). The European Committee of Social Rights reached the unanimous decision that France is in violation of the European Social Charter with regards to housing rights. It acknowledged that the DALO was one of a number of encouraging initiatives since 2006, but that, 'Further action and progress are crucial to ensure that everyone's right to housing is fully and effectively implemented' (FEANTSA, 2008). The experiences of both France and England also reveal the centrality of governance arrangements to the effective delivery of enforceable rights to housing, and the need for clear lines of responsibility for both housing providers and different levels of local and national government.

²⁰ The European Committee of Social Rights (ECSR) is the Council of Europe body responsible for monitoring the implementation of the European Social Charter.

It can be concluded that the implementation of an enforceable housing right provides considerable potential to increase access to housing for homeless people, however, the detailed mechanisms for achieving this need to be carefully considered. Further, such a system should not detract from the importance of ensuring that the general housing system should allow most households to access appropriate accommodation without recourse to the right to housing. Arguably the best system would be one where an enforceable right to housing is in place but has to be used rarely as the vast majority of households are well housed.

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