
The Implementation of an Enforceable Right to Housing in France

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› **Abstract** *This paper was prepared in response to the review of the Scottish ‘right to housing’ (see Anderson, this volume) because there have been particularly important developments in France with respect to housing rights recently, which provide a useful counterpoint and comparison with the Scottish position and approach. The paper explores in detail why and how an attempt has been made to introduce an ‘enforceable’ right to housing in France, before considering how the French approach compares with the Scottish model. This French implementation is particularly interesting because contrary to what happens in Scotland, the enforceable right to housing owes nothing at all to political will. Housing and the homeless dominated the French headlines from the end of 2005 and those current developments linked to the media pressure “forced the government’s hand” and played a major role in the implementation.*

The following pages are divided into four main sections. This first section describes the French political housing context. Secondly it narrates the different events involved in the quick adoption of the law. The third section describes that part of the law that particularly affects homeless people. Finally, the fourth part compares the French law to the Scottish and examines the transferability of the two approaches to other countries.

› **Key words** *enforceable right to housing, homelessness, France, housing exclusion*

The Introduction of an Enforceable Right to Housing in France

In France, the right to housing is a recognised social right and is enshrined in subparagraphs 10 and 11 of the preamble to the Constitution of 27 October 1946:

“The Nation shall provide the individual and the family with the conditions necessary to their development.

It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society”.

This right is reaffirmed in a series of laws enacted during the last twenty years including: the Quilliot Act of 22 June 1982 (“*the right to housing is a fundamental right*”), in the Mermaz Act of 6 July 1989, the Besson Act of 31 May 1999 and in the Anti-Exclusion Act 1998. The Besson Act was passed to implement the right to housing and Section 1 therefore provides that “Guaranteeing the right to housing is a duty of solidarity incumbent upon the whole nation”¹. The nation has no obligation to provide housing to anyone on demand but must provide assistance (though not necessarily permanent housing) to those who meet the statutory criteria to qualify for it. Worded this way, the right to housing is not “enforceable” (i.e. it gives no entitlement to relief through the courts for those who cannot find somewhere to live).

The Anti-Exclusion Act 1998 also has a housing focus emphasizing measures for better prevention of evictions, reform of housing allocation, action on empty homes and tackling substandard housing. The SRU Act (Loi relative à la solidarité et au renouvellement urbains / Urban solidarity and town planning renewal Act) confirming the right to decent housing supplements some of these measures.

The expression “enforceable right to housing” was first used in France in 2002 in a report by the homeless housing committee Haut Comité pour le Logement des Personnes Défavorisées (HCLPD) which has been studying housing issues since 1993². Since that time, the HCLPD reports have developed thinking on the implementation of an “enforceable right to housing” which would give society not simply the ‘best efforts’ obligation required on the part of the State by the Besson Act, but a performance obligation under which central government’s responsibility for guaranteeing the right to housing would be devolved to local

¹ <http://www.legifrance.gouv.fr/texteconsolide/MDEAB.htm>

² “Vers un droit au logement opposable”, 8th Report of the Haut Comité pour le Logement des Personnes Défavorisées, October 2002

authorities and homeless persons would have official forms of redress first by mediation then through the courts.

The enforceable right to housing (DALO) found a resonance with civil society, as evidenced by the repeated demands of voluntary welfare agencies. In 2003, the voluntary community came together to create a platform for the enforceable right to housing linking together more than 50 voluntary organizations under the aegis of ATD Quart Monde. In an opinion adopted in 2004, France's Economic and Social Council recommended that an enforceable right to housing be introduced and at the housing conference of 1 July 2004, followed by the National Conference to Combat Exclusion, the Right to Housing Task Force (which came out of the National Housing Council and the National Council on Policies to Tackle Exclusion) unanimously adopted a report whose main proposal was to make the right to housing enforceable.

The DALO returned to the headlines after the summer 2005 fire deaths in Paris of inadequately housed people living in converted flat buildings³. Public outrage prompted a private member's bill "establishing an enforceable right to housing", which was introduced in the French National Assembly⁴ on 28 September 2005 but did not make it to enactment. Finally, in the debate on a government housing bill on 11 April 2006, the socialist MPs proposed that the law should include the concept of an enforceable right to housing. The government rejected the DALO and the Minister for Social Cohesion, Jean-Louis Borloo, described the initiative as "untimely and unrealistic"⁵.

The 11th HCLPD report argues that "the right to housing is stalled, and will remain so until an effective shield has been raised against exclusion (...). Enforceability is that shield, and it is important to implement it as soon as possible. Obviously, there is no question of legislating the right to housing into enforceability overnight. Enforceability is about making government face up to its responsibilities for a right that requires complex policies to be implemented. It must be framed in an organised and planned manner, and based on consultation which is the only way to allay concerns."⁶ The HCLPD proposed a 6-year plan of action in order to lay the groundwork for successful implementation of the DALO.

³ On 26 August 2005, seventeen people died and about thirty were injured in a fire in a 6-floor multiple-occupation building at 20 boulevard Vincent-Auriol (in Paris' 13th district). Most of the victims were Malian nationals and included 14 children. The families had been temporarily housed since 1991. The building is owned by the State and had been lent to the Emmaüs association which was doing renovation work in it.

⁴ <http://www.assemblee-nationale.fr/12/propositions/pion2541.asp>

⁵ <http://hebdo.parti-socialiste.fr/2007/01/04/342/>

⁶ "Face à la crise: une obligation de résultat", 11th Report by the Haut Comité pour le Logement des Personnes Défavorisées, December 2005, p. 57

However, the DALO was then implemented in France by the government which, just months earlier, had rejected it in Parliament. The “organisation”, “planning” and “consultation” called for by the HCLPD were to be abandoned in the light of the events of late 2005, hastening the enactment of the legislation which established an enforceable right to housing.

An Enforceable Right to Housing (DALO)

Housing and the homeless dominated the French headlines from the end of 2005. After the fires in the low-cost residential hotels and substandard converted flat buildings in Paris at the end of 2005, the campaign to distribute tents to the homeless by Médecins du Monde at the start of 2006, and the problems created by these “tent cities” in the summer⁷, the end of 2006 was marked by the action taken by the Enfants de Don Quichotte voluntary organization, which was to be behind the introduction of the enforceable right to housing in France.

In October 2006 Augustin Legrand, an occasional entertainment industry worker and founder of the Enfants de Don Quichotte association, decided to go and live “a homeless person’s life” in the streets of Paris. He set up a blog⁸ and contacted the media to get a public spotlight on the association. In December, he pitched nearly 200 red tents on the banks of the Saint Martin canal in Paris (10th district) to call attention to the plight of the homeless. The public were encouraged to come and spend one or more nights sleeping outside in solidarity with the homeless. In the run-up to the elections, the Enfants de Don Quichotte were trying to raise politicians’ and public awareness of housing and temporary accommodation for street homeless people.

On 25 December 2006, the Enfants de Don Quichotte drew up a 6-point Saint Martin’s Canal Charter for access to housing for all⁹:

1. keep hostel provision open 24 hours a day all year round and make admission more humane;
2. stop throwing people back onto the streets. Everyone accepted into a shelter must have the opportunity to move on to settled accommodation;
3. create a supply of temporary housing now;

⁷ The Médecins du Monde organization handed out tents to the homeless in Paris in winter 2005-2006. But the tents did not disappear when spring and the summer arrived. In July and August 2006, local residents began to protest against the presence of the tents and their occupants who had taken up permanent residence in the streets and squares of Paris.

⁸ <http://www.lesenfantsdedonquichotte.com/v2/index.php>

⁹ <http://www.lesenfantsdedonquichotte.com/v2/charte.php>

4. create more social housing that is accessible to the poorest households;
5. develop alternative forms of housing;
6. make a right to housing enforceable nationwide.

The following day, the Enfants de Don Quichotte were received by the Junior Minister for Social Cohesion, Catherine Vautrin, to whom they handed the new charter. Two days later, Augustin Legrand announced that the movement for civic solidarity with the homeless would be spread to other towns in France and tent cities grew up in Orléans, Lyons, Toulouse, Marseilles, Nice, Strasbourg, Bordeaux and elsewhere.

Jacques Chirac then used his televised New Year's message to the French population to announce his intention to create "an enforceable right to housing": "What is needed is to establish a real enforceable right to housing, that is, to make the right to housing a reality. I am asking the government to move forward on this in the next few weeks."

Events moved quickly at the start of 2007, and the policy decisions were taken: on 2 January, Augustin Legrand was received in Parliament by the parliamentary group, then met Social Cohesion Minister Jean-Louis Borloo. On 3 January, Dominique de Villepin announced his intention to table a Bill on the enforceable right to housing. On 8 January, Jean-Louis Borloo announced a radical "overhaul" of the emergency accommodation system. "Anyone taken into a emergency accommodation must be offered a long-term solution relevant to their circumstances (...)”¹⁰ and social support.

Bill No. 2007-290 of 5 March 2007 introducing the enforceable right to housing and miscellaneous measures to promote social cohesion was presented to the Cabinet on 17 January 2007 and published in the Official Journal on 6 March 2007¹¹.

In the wake of the Government Framework Act for Social Cohesion (18 January 2005) and the National Commitment to Housing Act (13 July 2006), both of which included measures for disadvantaged groups, the new Act placed a performance rather than just a 'best efforts' obligation on the State. The new legislation establishing an enforceable right to housing is to be brought into effect in two stages. It is set to apply firstly to the poorest groups from the end of 2008, and from 1 January 2012 the enforceable right to housing should extend to everyone who qualifies and has applied for, but not been allocated, social housing.

¹⁰ Decision record of 8 January 2007, http://www.logement.gouv.fr/IMG/pdf/Releve_de_decision.08.01.07.pdf

¹¹ <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=SOCX0600231L>

Once the Enforceable Right to Housing Act comes into effect, some categories of social housing applicant – those who are living lawfully in France but do not have decent housing – will be able to apply to an administrative tribunal for legal relief against the authorities. If they have been waiting for housing for an ‘abnormally long time’ during which they have been offered no alternative permanent housing that matches their needs and ability to pay, the case can be referred to a mediation committee whose main concern is to settle the matter by agreement and to determine what priority the applicant should have. If the decision goes against the State, it will have to compensate the complainant.

Broadly, the Enforceable Right to Housing Act contains five key measures:

1. The State guarantees the right to housing as propounded in the Besson Act. So any legal proceedings in the administrative tribunal at the end of a regulated procedure will lie against the State.
2. From 1 December 2008, the DALO will cover the 6 highest-priority categories of applicant, who will in future be able to claim housing: roofless people; tenants facing eviction with no prospect of rehousing; people in temporary accommodation; people placed in housing considered to be substandard or unfit; people with at least one dependent child living in housing not regarded as decent; people with a disability (or with a disabled dependent) whose housing is not regarded as decent;
3. From 1 January 2012, it will be extended to all other people who qualify for social housing but have been on the waiting list for an abnormally long time without being allocated housing.
4. All these groups of people will be able to take their case to the mediation committee and appeal to the administrative tribunal if a committee ruling in their favour is not acted on within a reasonable time. The court (i.e. the administrative tribunal) will be able to order the State to house the applicant and if they fail to do so will be subject to a default fine.

Apart from the enforceable right to housing, the Act also includes financial and tax measures, some of which are intended to stimulate the supply of housing and temporary accommodation places (e.g. housing and additional accommodation places programme, tax breaks for accommodation and resettlement centres (CHRS), some accommodation provision for older people, up-rating housing benefit and assistance, measures on landlord-tenant relations).

The Enforceable Right to Housing Act is supplemented by two measures. One measure aims to continue and augment efforts to improve the social housing supply. A social housing stimulation policy has already been put in hand by the

social cohesion plan (section 87 of Act No. 2005-32 of 18 January 2005). The second measure relates to the enhanced plan of action on homelessness (PARSA) which is considered in the next section.

The Enhanced Plan of Action on Homelessness (PARSA)

The record of decisions signed on 8 January 2007 by Jean-Louis Borloo, Minister for Employment, Social Cohesion and Housing, laid down the principle that: “Anyone taken into emergency accommodation provision must be offered an appropriate, permanent and if need be supported solution appropriate to their circumstances in the public social housing stock, the officially approved private stock, a CHRS, a CADA (asylum seeker reception centre), LogiRelais (government-subsidized residence hotels), a halfway house or community reintegration accommodation”¹².

These decisions were strengthened by section 4 of the Enforceable Right to Housing Act, which provides that “anyone taken into emergency accommodation provision must be able to remain there if they so wish until offered a referral. Such referral must be to stable temporary accommodation or care provision, or to housing, appropriate to their circumstances”¹³.

A departmental instruction dated 19 March 2007¹⁴ instructs prefects on how to implement a principle of continuum of care for homeless people. The idea is to ensure continuity between intake and accommodation of the homeless in emergency provision pending a proposed referral towards a settled solution. The continuity principle is based on three requirements:

- the idea of a maximum length of stay in emergency accommodation provision is discarded (length of stay will be determined by reference to the proposed referral towards permanent provision);
- an assessment/referral interview will be held to enable referral towards stable temporary accommodation provision, care provision or housing, appropriate to the individual’s circumstances;
- appropriate social follow-up will be provided with the individual’s consent, coordinated with the ordinary social follow-up, including health problems and especially psychiatric care. The emergency provision will be relieved of this

¹² Decision record of 8 January 2007, http://www.logement.gouv.fr/IMG/pdf/Releve_de_decision.08.01.07.pdf

¹³ <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=SOCX0600231L>

¹⁴ DGAS departmental instruction of 19 March 2007, http://www.fehap.fr/social/personnes_en_difficultes_sociales/07_90t0.pdf

requirement only if the individual voluntarily leaves the establishment or fails to attend it during the period set by the house rules, refuses the interview, or behaves in a dangerous manner towards the other users or staff.

Emergency accommodation provision “will be designed or modified so as to preserve the privacy of residents, including couples and young transients. The accommodation must include support towards achieving a freely-chosen settled continuum-of-care solution for those making their way back into society”¹⁵.

The new scheme comprises restructured temporary accommodation places and new temporary accommodation and housing provision, replacing the existing 13,500 emergency accommodation places with 27,100 new places (including 10,500 converted emergency places) distributed as follows:

- 6,000 emergency places converted into community reintegration accommodation
- 4,500 emergency places converted into CHRS places
- 9,000 halfway house places in addition to the existing 3,000 places
- 1,600 places on the LogiRelais programme
- 3,000 public social housing stock units offered as a priority to those coming out of CHRS provision
- 4,000 homes in the officially approved private stock offered as a priority to those coming out of CHRS provision

Community reintegration accommodation is to be seen as the period needed to provide individual support and must lead on to officially approved private social housing or any freely chosen appropriate alternative. “In all, these 27,100 homes, residence hotels, CHRS or community reintegration accommodation places instead of the 13,500 existing emergency accommodation places should make it possible to meet the aim of appropriate accommodation for all. This scheme will guarantee fit and decent accommodation which will be supplemented by support for the groups concerned in shelter and hostel provision”¹⁶.

Section 2 of the Act of 5 March also sets target figures for local authorities to achieve in emergency accommodation subject to default fines. The target figures are backed up by quality objectives:

¹⁵ Decision record of January 8, 2007, http://www.logement.gouv.fr/IMG/pdf/Releve_de_decision.08.01.07.pdf

¹⁶ Decision record of 8 January 2007, http://www.logement.gouv.fr/IMG/pdf/Releve_de_decision.08.01.07.pdf



- emergency accommodation opening hours must be extended from 5.00 pm to 9.00 am and round-the-clock at weekends;
- experimentation will be encouraged (accommodating users with pets, adapted housing, converting emergency places into private rented flats operated by voluntary organizations);
- support will be provided for emergency shelter professionals with voluntary organizations.

A National Monitoring Committee of Voluntary Organizations will be set up, co-chaired by the Junior Minister for Social Cohesion, Catherine Vautrin, and the president of Enfants de Don Quichotte, Jean-Baptiste Legrand. Implementation of the continuity principle will also be kept under review by the departmental social observation committees (set up by the national standard for intake, accommodation and integration). These committees, which bring together the authorities and operators concerned to ensure that front-line workers take joined-up and complementary action, identify failings and propose the necessary adjustments, will have to put in place a watchdog system to assess implementation of the PARSA and its impact on emergency accommodation provision. The findings of continuity implementation monitoring will be sent to the national PARSA implementation monitoring committee.

Comparison Between Scotland and France

A number of interesting points of comparison can be drawn between the Scottish and French experience. These points highlight not only the approach adopted in the two countries but are also suggestive of issues that may affect the transferability of these approaches to other countries.

Background to the legislation

The Scottish model had its origins in legislation and policy frameworks stretching over a long period. As Anderson (this volume) explains, there has been an enforceable right to long-term housing for priority groups (such as families with dependent children and ‘vulnerable adults’) in Scotland (and indeed elsewhere in the UK) since 1977. The key legal change that has now been made in Scotland is that, by 2012, this right to long-term housing will no longer be restricted to priority groups, but rather will apply to (almost) all of those who are defined as homeless. These recent developments are therefore best seen as a (radical) extension of a long-standing approach.

The establishment of a new Scottish Parliament in 1999, and the dominance of the centre-Left in Scottish politics, facilitated the development of a consensual style of policy development rooted in an evidence-based understanding of the problems and a broad agreement on the approach to be taken. In Scotland, there was clear political will to put homelessness issues high on the political agenda. However, there was little, if any, media or public interest in the work of the cross-sectoral Homelessness Task Force, established by the Scottish Government, which recommended the changes in law and policy which culminated in the 'Scottish model' that is now much discussed across Europe.

In France, by contrast, the enforceable right to housing owes nothing at all to political will. It was the **media pressure** brought to bear by the Enfants de Don Quichotte association that "forced the government's hand". Hence, Fnars emphasizes that the PARSA "is no more than the makings of a real public policy in that it is not underpinned by a consensus of all stakeholders (voluntary organizations, State, local authorities, health professionals, etc.) on how to provide care and support (appropriate responses) for those confronted with exclusion at a time when insecurity is becoming more widespread and varied"¹⁷.

The French Enforceable Right to Housing Act (March 2007) cannot be said for certain to provide the legislative basis of a policy for homeless people. This is because, unlike the Scottish case, the conditions in which the French legislation was established were arguably not conducive to an effective policy for tackling homelessness. In France, the right to housing was enshrined in the 1946 Constitution but was not enforceable: the State had to use 'best efforts' but this was not a performance obligation. The entrenching of an enforceable right to housing in 2007 now imposes a performance obligation on the State. France's DALO will be rolled out from 2007 to 2012. Scotland chose a longer period, from 2001 to 2012.

The Scottish model is often referred to as simply a 'right to housing' but in fact this enforceable entitlement to long-term accommodation is only one aspect of a broader set of policies to tackle homelessness which include, crucially, a duty on local authorities to produce and implement a strategy to prevent and address homelessness in their area. The Scottish policy attempts to link together housing, health, social welfare and labour market integration and deploys preventative measures. Arguably, the French legislation does not take all these elements into account: it was enacted in response to media pressure, and there was no preliminary consultation with the different stakeholders (e.g. researchers, voluntary organizations, local authorities) to identify and analyse the processes that produce

¹⁷ Brégou F., Robion S., "Réforme de l'accueil des sans-abri: les conditions de la mise en œuvre", la Gazette, 30 March 2007, FNARS, http://www.fnars.org/default.asp?LINK=zoom&ID_ARTICLE=3765&ID_TOPIC=28

exclusion from and by housing. There is therefore a need to mesh together all the policies for tackling exclusion that must take into account the needs for action on social welfare and health linked to vulnerability. This is what the Haut Comité pour le Logement des Personnes Défavorisées recommended: “The very nature of the processes of exclusion requires action on all the policies that directly or indirectly touch on housing, with extensive State involvement and management at sub-national level”¹⁸.

Broadening the definition of homelessness

The term “sans-abri” as used in France implies a very narrow definition of homelessness. The concept of “homeless” is closer to that of “mal-logé” which embraces having nowhere to live but also includes living in temporary accommodation, insecure, substandard or inappropriate housing (see ETHOS definition). But the Enforceable Right to Housing Act arguably takes these different situations into account in that it refers to six affected groups: homeless (i.e. roofless or sans-abri), threatened with eviction without rehousing, in temporary accommodation, living in premises that are not meant for habitation, substandard or dangerous, and families with under-age children in housing that is not decent or is too small. Priority also goes to those who are disabled or are living with a disabled person.

From 1 January 2012, it will be extended to all other people who qualify and have applied for but not been allocated social housing.

From its inception in 1977, the UK legislation incorporated a very wide definition of homelessness. Besides rooflessness, it included anyone who does not have housing which it is reasonable for them and their family to occupy and embraces almost all of the categories in the ETHOS framework (Edgar and Meert, 2005). However, entitlement to long-term rehousing was, as noted above, confined to those who were not only ‘homeless’ but were also in a ‘priority need’ category (homeless people who were not in priority need were entitled only to advice and assistance). The effect of the new Scottish legislation is to gradually expand, and by 2012 eliminate, the ‘priority need’ categories so that all households who come within this (broad) statutory definition of homelessness are entitled to permanent housing.

¹⁸ “Face à la crise: une obligation de résultat”, 11th Report by the Haut Comité pour le Logement des Personnes Défavorisées, December 2005, p. 53

Use of Local Authorities as the key agents to deliver the policy

A key problem in France is with the politico-administrative framework. Whereas in Scotland responsibility for delivering housing and social welfare policies is quite straightforwardly distributed between the State and 32 local authorities, the French set-up is much more complex and creates profound difficulties in implementing centralised policies. In France central government, regional, departmental, district associations and local authorities all come into play.

For example the new French legislation allows for responsibility to be devolved to local authorities on an opt-in basis. Local authorities or statutory local authority services joint ventures (local, metropolitan and district associations) can apply to have responsibility for implementing the right to housing devolved to them. Any appeal to the administrative tribunal will therefore be exercised against them and not against the State.

The Act establishing the DALO provides for implementation of the Act to be monitored. An annual assessment report will be made to Parliament on how the single departmental registration system is working. In particular, it will contain figures on the number of unsatisfied housing applications. Before October 2010, the *Economic and Social Council* will lay before the President of the Republic and Parliament an evaluation report on the implementation of the guaranteed right to housing. Meanwhile, a monitoring committee on implementation of the enforceable right to housing has been set up which brings together the Haut Comité pour le Logement des Personnes Défavorisées, associations representing local politicians, and organized voluntary and other integration enablers. A first report is expected in 1 October 2007.

Conclusion

This paper has attempted to demonstrate that, while the Scottish model is often described a 'right to housing', and the new French framework is explicitly intended to establish a 'right to housing', the policy and legal position in these countries is profoundly different. It remains to be seen how successful the French legislation will be in delivering an enforceable right to housing for homeless people and other groups, and this paper has highlighted the significant politico-administrative and other hurdles that have to be overcome before a national policy on homelessness can be implemented effectively in France.

› Reference Documents

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http://www.logement.gouv.fr/IMG/pdf/Releve_de_decision.08.01.07.pdf

Speech by Jean-Louis Borloo on the Bill establishing the enforceable right to housing and miscellaneous measures to promote social cohesion to the French National Assembly (15 February 2007):
http://www.logement.gouv.fr/IMG/pdf/DALO_de_JLB.pdf

Enforceable Right to Housing and Promotion of Social Cohesion (Miscellaneous Measures) Act No. 2007-290 of 5 March 2007:
<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=SOCX0600231L>

Departmental instruction DGAS/1A/LCE/2007/90 of 19 March 2007 on the implementation of a principle of continuum of care for homeless people:
http://www.fehap.fr/social/personnes_en_difficultes_sociales/07_90t0.pdf