Protecting the Right to Housing in England: A Context of Crisis

Full Report
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Protecting the Right to Housing in England: A Context of Crisis

Dr. Jessie Hohmann

Executive Summary

England is experiencing a housing crisis. Exceptionally high numbers of people are homeless, or vulnerable to homelessness. The current housing environment is characterised by profound issues of lack of supply, high and further increasing housing costs, lack of security of tenure, and homes of such poor quality that they are unfit for habitation. These issues plague all of England’s main housing tenure types: the owner occupied, the private rental, and the social housing sector. Housing insecurity affects not only people on low incomes, but broad swathes of the English population, who currently live in situations of insecurity and uncertainty.

In this context of crisis, the government is failing to meet its obligations to ensure the right to housing of its population, so that everyone can enjoy a standard of living in homes that are adequate, safe, and secure.

The UK accepted international obligations to respect, protect and fulfil the right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR) when it ratified the ICESCR in 1976. It undertook to take progressive steps towards the realisation of the right to housing, using all the means at its disposal, both financial and otherwise.

In a climate of austerity, it is vital to point out that the government is obliged not to take regressive (that is, backward), steps or strip away enjoyment of the right to housing unless this is absolutely necessary. Any backward movement must be justified under the strictest possible criteria.

Yet a growing number of individuals and families in England are not able to secure the adequate, safe and affordable housing that the ICESCR requires. Homelessness is rising. Housing is increasingly unaffordable, and legislative changes have weakened key safety nets for English households.

This report focuses on two areas of particular concern in England, which show that the UK government is manifestly failing to discharge its obligations for the right to adequate housing under the ICESCR.
These are first, homelessness, and second, multiple concerns with the quality, affordability, and regulation of the Private Rental Sector (PRS).

Both areas illustrate serious concerns with retrogression (that is, backward steps) in the enjoyment of the right to adequate housing; and how current law and policy over housing fails to protect some of England’s most vulnerable and marginalised individuals and families.

**Homelessness:**

Exceptionally high levels of homelessness in England represent a serious concern with respect to the enjoyment of the right to housing under the ICESCR. Homelessness is the paradigm violation of the right to housing, and its most obvious manifestation. The deprivation of any dwelling that a person may call his or her own, with adequate privacy and security of tenure, is denied to the person experiencing homelessness.

The report details:

- The number of individuals forced to sleep rough in England has increased year on year, by a total of 55% since 2010 and 14% in the last year alone.
- Frontline services for homeless prevention and support are under severe financial pressure, with cuts negatively affecting the number of shelter and hostel beds and the number of frontline workers available, despite the growing numbers of homeless people needing these services.
- Hidden homelessness, overcrowding, and the use of inadequate temporary accommodation mask, but do not relieve, the true levels of homelessness. Increasing numbers of hidden homeless individuals and families live in a situation of unacceptable insecurity and instability.
- Use of temporary ‘bed and breakfast’ accommodation is higher now than at any time in the past five years, and its use for families continues in breach of the government’s own rules.
- The vulnerable continue to live in insecure conditions: 280,000 households in England are currently at risk of homelessness, a 9% increase in one year.
- Local Housing Authority (LHA) duties to homeless and threatened homeless individuals have been weakened, allowing LHAs to discharge their duties without the consent of the homeless person. This puts more of the most vulnerable and marginalised households at risk of street homelessness.

The fact that levels of homelessness are rising, more households are at risk of becoming homeless, and key services for homeless people are being cut, points to a retrogressive step in the enjoyment of the right to housing, and thus a serious failing in the Government’s obligations under the ICESCR.

**The Private Rental Sector:**

The private rental sector in the UK has, in recent history, accounted for only a small part of the tenure picture. However, the sector has grown rapidly, and set against a shrinking social housing sphere, the private rental sector now forms the second largest form of tenure in England.

Serious issues of quality, security of tenure, and affordability make the PRS a profoundly insecure form of housing for many.
The report shows that:

- A startling 33% of dwellings in the PRS are non-decent, meaning they do not meet basic standards of health, safety and habitability. For one third of those living in private rental accommodation, life is lived in unsafe and unhealthy conditions below the basic minimum considered adequate in England.
- Security of tenure in the PRS is inadequate. Tenants are afraid to complain about the poor quality of properties for fear of retaliatory evictions or arbitrary rent rises. There are no real safeguards against this practice, and as many as 200,000 tenants were subject to a retaliatory eviction in 2013.
- The PRS is increasingly unaffordable. The cost of housing is almost double that of social housing, and private tenants are increasingly unable to meet the costs. A quarter of those renting in the PRS need housing benefit to meet the cost of housing.

The government has increasingly presented the PRS as an important lifestyle choice, and as a tenure suited to greater labour market mobility and flexibility. While this may be the case for some economically empowered households, the overall context of private rentals shows that the sector provides housing for a large number of people, particularly families, for whom a private rental home is a source of anxiety over tenure security, cost, habitability, and quality, rather than a sought-after choice.

**Key Recommendations:**

**Homelessness**

1. The government should take immediate measures to end homelessness, ensuring an adequate supply of affordable, permanent, decent, and habitable housing, by building and/or facilitating the building of at least 250,000 new homes per year.

2. In the absence of an adequate supply of affordable, decent and habitable housing, the government should take immediate measures to ensure affordability in the short-term through:
   a. the adequate provision of state benefits to those unable to afford housing costs;
   b. sustained investment in existing affordable housing stock.

3. The government must take immediate measures to reduce the exceptionally high levels of street homelessness, including through:
   a. ensuring adequate numbers of hostel or shelter places
   b. ensuring adequately resourced frontline support is available to all homeless or threatened homeless individuals and families
   c. taking immediate legislative measures to strengthen security of tenure across the
      i. social housing sector; and
      ii. private rental sector
   d. taking policy measures to ensure housing is affordable in line with recommendations 1 and 2 above.

4. The government should strengthen legislation and take budgetary measures to

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1 See also the key recommendations in Private Rental Sector.
a. ensure 'priority need' categories accurately reflect all real vulnerabilities and do not exclude those in real need;
b. reinstate the crucially protective link between the discharge of LHA homelessness duties and the provision of social housing to ensure all vulnerable individuals and families remain adequately and securely housed.
c. ensure Local Housing Authorities:
   i. cannot discharge their duties to the homeless through provision of private rental accommodation without the consent of the homeless person;
   ii. discontinue the use of inadequate, temporary accommodation such as bed and breakfast accommodation for homeless and threatened homeless individuals and, particularly, families.

Private Rental Sector

1. The State must take immediate legislative measures to strengthen security of tenure in the private rental sector including through:
a. Stronger and better resourced legislative measures to prohibit retaliatory evictions, including through preventing landlords from bringing eviction procedures as reprisal for well-founded maintenance and improvement requests where a property is in a serious state of disrepair or serious hazards are present;
b. legislative measures to prohibit arbitrary or retaliatory rent increases
   c. Increasing the minimum tenancy term of private rental agreements to give tenants security and stability.

2. The State must take immediate steps to ensure housing in the private rental sector meets the 'decent homes' standard including through:
a. immediate and rigorous monitoring of the safety and quality of housing in the sector
b. taking progressive steps, alone and in conjunction with the private sector, to improve the quality of housing in the sector through new building and improvements to existing housing stock.

3. The state must take steps to ensure affordability in the private rental sector including through
   a. stimulating and creating new housing across tenure types
   b. providing tenants with immediate legislative protection against arbitrary or retaliatory rent increases.

Civil Society Endorsements:

Article 12; Black Environment Network; Centre for Secular Space; Centre for Welfare Reform; Connect in the North; The Design Charity; Disability Rights UK; Galop; Homeless Link; Housing Justice; LGBT Consortium; The National Council for Voluntary Youth Services (NCVYS); New Horizon Youth Centre; Refugee Council; Stonewall Housing and Women’s Resource Centre.
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1. **Introduction: Housing, a Context of Crisis:**

“Due to devolution of some functions away from the Westminster government in 1999, the legislative and policy terrain of housing is different in England from other parts of the United Kingdom. This report considers the English situation only.

The UK government accepted international obligations to respect, protect and fulfil the right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR) when it ratified the ICESCR in 1976. Yet a large number of individuals and families are not able to secure the adequate housing that provides the safe and affordable living conditions that the ICESCR requires.

The current housing climate is characterised by rapid changes in modes of living and tenure in the UK, interwoven in complex relationships with issues of supply, affordability, security of tenure, and habitability. These problems in realising the right to housing are linked to a political climate of austerity, and attendant cuts to state social security and other benefits. The resulting situation is accurately identified as one of crisis.²

This report focuses on two areas of particular concern in England, where the UK government is manifestly failing to discharge its obligations for the right to adequate housing under the ICESCR:

1. Homelessness; and
2. Multiple concerns with the quality, affordability, and regulation of the Private Rental Sector (PRS).

With respect both to homelessness and the multiple areas of concern in thePRS, issues of affordability, security of tenure, habitability (quality), supply, and security of tenure emerge as major stumbling blocks to the actual enjoyment of adequate housing. Importantly, these issues map directly onto the seven elements which must be present for the right to adequate housing under the ICESCR to be enjoyed (set out below in Section 3.2.1). Accordingly, these multiple problems reveal that many people in England currently lack the right to adequate housing, and the government is failing in its obligations to them.

Moreover, the problems in all these areas are increasing, rather than decreasing, and give rise to real concerns that the UK is failing to fulfil its obligation of progressive realisation. More problematically, in fact, this is evidence of *retrogression* – backward steps – in the enjoyment of rights, which can only be justified in the most exceptional of circumstances and on the most stringent of grounds, many of which are not met in the English context.

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2. **Housing in England: A Snapshot of the Context**

2.1. **Rapid Change: Housing Upheavals**

Housing in England is composed of three major tenure types: owner-occupied housing, social housing, and a private rental sector (PRS).

As recently as the 1970’s state provided or subsidised social housing in the UK comprised almost a third of the housing stock, and housed more than a third of the population. By 2012, the most recent year for which statistics are available, the vast majority of households in England lived in the private sector: 18.9 million of England’s 22.7 million dwellings were either owner-occupied (14.8 million) or privately rented (4.1 million). Only 3.8 million households are now living in social housing.

The last four decades can thus be characterised as, at the least, ones of rapid change or upheaval in the housing experience.

Four main challenges in the housing context can be identified, within which the enjoyment of the right to housing in England should be understood:

2.2. **Four Main Challenges to the Enjoyment of the Right to Adequate Housing**

2.2.1. **Affordability**

In the 15 years to 2012, median house prices in England rose by 200%. At the same time, median full-time earnings rose by just over 50%. Many households, across tenure categories, experience pressures of affordability, given the overall context of high house prices, low pay, low savings rates, a high level of household or personal debt, and increasingly stringent restrictions on the housing costs which are eligible for coverage by State benefits.

For most households, the cost of housing is the single largest household expense. For more vulnerable households, the cost can only be expressed as prohibitive: In 2011/12, private renters in the bottom fifth of the UK income distribution spent an average of 56% of their income on housing. And for as many as 20% of all households, state support is

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3 Alison Ravetz, *Council Housing and Culture: The History of a Social Experiment* (Routledge, 2001) at 2.
4 Department for Communities and Local Government *English Housing Survey Headline Report 2013-14* (DCLG, February 2015) at 8.
5 Department for Communities and Local Government, *Table 586: Median House Prices based on Land Registry Data, by District, from 1996* (DCLG, April 2014).
6 Houston et al *Gaps in the Housing Safety Net* (University of St Andrews, 2014) (Commissioned by Shelter) at 10. See also Bone ‘Neoliberal Nomads’ above note 2 at 3.
7 Houston, ibid.
8 Ibid.
necessary to be able to meet the cost of housing at all.\textsuperscript{9} Not only low, but also middle income, groups are struggling to meet the cost of housing.\textsuperscript{10}

It is, in fact, difficult to understand the overall housing situation in England absent an examination of recent, and deepening, cuts to social or welfare benefits. As a leading housing charity notes: ‘policy factors – particularly ongoing welfare benefit cuts – have a more direct bearing on levels of homelessness than the economic context in and of itself.’\textsuperscript{11} Several of these state benefit cuts have a specific and targeted impact on the affordability of housing. These include the housing benefit reductions for households considered to be ‘under occupying’ social housing, in the form of the controversial ‘spare room subsidy’ or ‘bedroom tax.’ A policy justified on the grounds of economic rationality and fairness,\textsuperscript{12} this cut in benefit has put additional pressure on already vulnerable households and individuals, particularly those with disabilities.\textsuperscript{13} The Department for Work and Pensions Interim Report evaluating the impact of the policy reveals that 20\% of affected households have been unable to pay the increased cost of their housing, and indicated that where payments were being made, in more than 50\% of cases, households were forced to make cuts to other household essentials or incur debts in order to pay the rent.\textsuperscript{14} These essentials included energy for heating and lighting and adequate food.\textsuperscript{15} Some households report having skipped meals to pay rent since the policy came into effect.\textsuperscript{16}

The picture is further complicated by stark differences across geographic regions. London, home to almost 8.5 million people,\textsuperscript{17} has experienced a rapid inflation in the cost of living. In the year to January 2015, house prices in London rose 13\%\textsuperscript{18} and the average house price is £510,000.\textsuperscript{19} Housing costs in much of the South of England are also high.\textsuperscript{20} While housing costs in other areas of England, particularly the more economically depressed North East, are lower, this does not necessarily equate to greater affordability. When lower salaries are taken into account, all but a handful of regions in England are classed as unaffordable, based on average house prices exceeding seven times the average salary.\textsuperscript{21}

\textsuperscript{10} Home Truths 2014/15 above note 2 at 19, UN Special Rapporteur’s Report on the UK, above note 2 at para 22.
\textsuperscript{11} Homelessness Monitor 2015, above note 2 at viii. Cuts to social welfare and social security will be examined as a breach of the ICESCR in a later report to be produced by JustFair in 2015.
\textsuperscript{14} Department for Work and Pensions Evaluation of Removal of the Spare Room Subsidy ibid at 17 and 69 – 72.
\textsuperscript{15} Ibid at 70 – 71.
\textsuperscript{16} Ibid.
\textsuperscript{18} Office for National Statistics, House Price Index, January 2015 (ONS, 24 March 2015).
\textsuperscript{19} Ibid at 9.
\textsuperscript{20} Ibid at 7. See also Home Truths 2014/15, above note 2 at 23.
\textsuperscript{21} Ibid and at Figure 21.
2.2.2 Security of Tenure

Especially in the private rental sector, but also with respect to social housing, tenure is increasingly insecure. With the expansion of homeownership since the early 1980s, and in the overall context of low wages and scant savings, increasing numbers of low and moderate income households are now owner-occupiers. Thus, across all tenures, security of tenure is not robust. In the rental sectors, this is mainly due to lack of protection offered to tenants though the tenancy agreement itself, and lack of accompanying regulation. In the home-owner market, tenure insecurity is more contextualised, and is experienced when home owners cannot pay their mortgage costs due to the disparity between the value of the mortgage and the income of the mortgagee; other high personal debt burdens, or loss of employment, for instance. While the UK has not suffered the shocks and repossessions experienced in the housing crisis elsewhere in Europe, many households remain vulnerable, particularly those already economically or socially disadvantaged.

2.2.3 Supply

There is wide agreement that England faces a stark undersupply of dwellings, and that current policies are not adequate to remedy this issue. Sound estimates are that 250,000 new dwellings are needed each year, double the number currently being built. Overall, it is projected that at current building rates, by 2031 England will be 2.5 million homes short of need. This picture reflects decades of underproduction, rather than a recessionary phenomenon. As such the current undersupply cannot be justified in terms of austerity policies or on account of any recent economic downturns.

2.2.4 Quality or Habitability of Dwellings

A startling 22% of dwellings in England failed to meet the ‘decent homes standard’ in 2012. Although this percentage is an improvement overall since 2006, in the private rental sector,

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22 See below Section 4.2.
23 Carr & Cowan, above note 12, provide a concise summary of tenure security changes in the Social Housing sector at 77 – 80.
24 Houston, above note 6 at 10.
27 Holmans, ibid.
29 Homelessness Monitor ibid.
30 The English Housing Survey Headline Report, above note 4 at 71 states that a ‘decent home’ is one that meets all of four criteria:
   a) it meets the current statutory minimum standard for housing as set out in the Housing Health and Safety Rating System (HHSRS); b) it is in a reasonable state of repair (related
there has been no improvement and non-decent homes comprise one third of the housing stock in the private rental sector. ³¹ Overall, therefore, nearly a quarter of dwellings in the UK cannot be said to meet adequate standards of habitability, and thus an unwarranted number of households in the UK are exposed to very poor home environmental quality, with high levels of risks, particularly to health.

3. The Legal Framework: the Government’s Obligations for the Right to Housing

3.1 National Position on ICESCR Rights

The United Kingdom has signed and ratified the ICESCR. ³² However, the state has not directly incorporated the rights under the ICESCR into its national laws. This means that individuals cannot ask a domestic court to adjudicate a rights claim on the basis of a breach of the ICESCR. In addition, the UK has yet to ratify the Optional Protocol to the Convention, which provides a mechanism for individuals to bring complaints before the Committee on Economic and Social Rights (CESCR), the independent body of experts which monitors implementation of ICESCR. Despite this lack of incorporation, it is important to note that the international obligations for the rights contained in the ICESCR are nonetheless binding on the UK.

The UK is also a party to the European Convention on Human Rights (ECHR) under which it has binding international obligations which have relevance for protecting the right to housing. While the ECHR does not contain a right to housing per se, various Articles of the Convention and its Protocols may provide some protection for aspects of the right to housing. ³³ In addition, the UK has obligations for ensuring the right to housing under the European Social Charter (ESC). ³⁴

No justiciable right to housing exists under domestic law, though the Human Rights Act (HRA) 1998 and the Equality Act 2010, among other legislation, may provide avenues to

³² The UK signed the Convention in 1968, and ratified it in 1976.
³⁴ Ibid at 50 – 67. The UK has not chosen to ratify the Revised European Social Charter, but has obligations under the original European Social Charter. The UK has accepted obligations with respect to Articles 15, 16, and 19, all of which protect the right to housing in some aspect. See UK Country Fact Sheet (January 2015).
protect and ensure aspects of the right to housing. Importantly, the HRA incorporates the rights under the ECHR into domestic UK law, and all public authorities are under an obligation to act in conformity with those rights.

3.2 The Right to Housing under the ICESCR

3.2.1 Substantive Obligations under Article 11(1)

The legal standard against which the UK’s performance on ensuring the right to housing will be measured is set out in Article 11(1) of the ICESCR:

The States Parties to the Present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 11(1) sets the right to housing within the broader enjoyment of an adequate standard of living, reflecting housing as one of a number of elements needed to enjoy a decent life. However, each aspect of Article 11(1) has its own legal content and, therefore, entails its own legal obligations for the state.

The Committee on Economic, Social and Cultural Rights has, in its authoritative interpretation of the right to housing in General Comment No 4 and General Comment No 7, set out seven aspects of housing which must be present in order for a state to be meeting its obligations with respect to the right to housing.

These elements include:

i) Legal security of tenure

Legal security of tenure can be considered the cornerstone of the right to housing. Any individual or family whose home is subject to seizure at any time, or who is subject to the threat of arbitrary eviction, cannot be said to enjoy the right to housing, but to reside only at another’s pleasure.

Accordingly, General Comment 4 states that ‘all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.’

35 Forced or arbitrary evictions are a prima facie violation of the ICESCR. 36

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The obligation to prevent forced evictions is immediate and not subject to the progressive realisation standard in Article 2(1) of ICESCR, discussed below. States have positive obligations to protect against forced evictions, which include an obligation to prevent such evictions being undertaken by private parties. The state should have in place legislative measures to prevent them.

Evictions will be in violation of State obligations under the covenant if they are undertaken in a discriminatory manner, or as a punitive measure. Evictions should be a last resort, carried out with a minimum of force, and subject to strict procedural safeguards.

Recognising that homelessness often leads to a breach of other human rights, the CESCR states that an eviction should not be undertaken if the immediate result will be the violation of other human rights of the individual.

ii) Availability of Services, Materials, Facilities and Infrastructure

All dwellings must contain certain facilities which are recognised as essential for the health, security, comfort and nutrition of the household. Specifically, each individual should have sustainable access to the following: natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. These facilities and materials represent the bare minimum requirements for adequate housing.

iii) Affordability

Affordability of housing has clear implications for the ability of individuals to enjoy their right to housing. Accordingly, the financial costs associated with housing should not compromise the household’s or individual’s ability to satisfy other basic needs. This means that, where housing is unaffordable, states have international legal obligations under the covenant to take measures which will ensure affordability. These steps include providing housing subsidies for both home owners and tenants, and ensuring that housing finance reflects housing needs. Tenants must be protected from unreasonable rent increases, whether their landlords are private parties or state agents.

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37 General Comment 4, above note 35 at para 8.
39 General Comment 4, above note 35 at para 9.
40 General Comment 7, above note 36 at para 10.
41 Ibid at para 12.
42 Ibid at para 13.
44 Ibid at para 16.
45 General Comment 4, above note 35 at para 8b.
46 Ibid.
47 See further Hohmann, above note 33 at 23 – 24.
48 General Comment 4, above note 35 at para 8c.
49 Ibid.
50 Ibid.
iv) Habitability

In order to meet the standard of adequacy required by the ICESCR, states must ensure housing is habitable in terms of the physical safety of the dwelling and its occupants. The dwelling must be of an adequate size, and protect the dwellers from excessive cold, heat, damp, or other environmental threats. It must not pose a threat to its occupants’ health.\(^{51}\) Health should be understood to encompass mental health.\(^{52}\)

v) Accessibility

Accessibility has two aspects. First, housing must be accessible for disadvantaged groups, including the elderly, children, those with physical disabilities, the terminally or chronically ill, HIV-positive individuals, and victims of natural disasters or those in disaster-prone areas.\(^{53}\) The Committee notes that the state should provide some priority consideration to these groups,\(^{54}\) in order to meet its obligations (both positive and negative in nature) to ensure equal enjoyment of the ICESCR rights to all.\(^{55}\) Secondly, access to land is related to access to housing, and states must take steps to ensure adequate and appropriate land is made available to meet housing supply needs.\(^{56}\)

vi) Location

Housing experts recognise that ‘the location of the dwelling constitutes one of the key elements – if not the key element – in the social integration of individuals into society’.\(^{57}\) Accordingly, housing must not be isolated from livelihood and educational opportunities, or health services, and houses should not be built on polluted sites.\(^{58}\) Moreover, particularly in cases where households need to be relocated, individuals should not be isolated from existing community ties and social or kinship networks.\(^{59}\)

vii) Cultural Adequacy

Housing must not suppress the expression of cultural identity, or the diversity of housing needs. Thus, those with particular housing traditions – for example, Traveller Communities, the Roma, or Gypsies should have the cultural aspects of their rights ensured. However, cultural adequacy should not be invoked to justify housing that is otherwise inadequate, in terms of quality or location. Importantly, in meeting its obligations for housing that is culturally adequate states must protect individuals from conditions that would not meet the

\(^{51}\) Ibid at 8d.
\(^{53}\) General Comment 4, above note 35 at para 8 e.
\(^{54}\) Ibid.
\(^{56}\) General Comment 4, above note 35 at para 8e.
\(^{57}\) Kemeny, Housing and Social Theory (Routledge, 1992) at 159.
\(^{58}\) General Comment 4, above note 35 at 8f.
\(^{59}\) Ibid.
norms of the community, or which could be considered degrading or shaming within the mores of the population at large.

### 3.2.2 The Nature of State Obligations under the Covenant

The nature of States Parties’ obligations under the ICESCR is set out in Article 2(1), which reads:

> Each States Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 2(1) sets out the obligation to progressively realise the rights in the Covenant, acknowledging that full enjoyment of all Covenant rights might not be immediately possible in all states.

However, the obligation of progressive realisation does not empty the Covenant of immediate or hard legal obligations. Rather, Article 2(1) requires the following action and imposes the following concrete obligations:

1) **Immediate Obligations and Minimum Core Rights**

Despite the overall progressive nature of the obligations under the Covenant, the ICESCR does impose immediate obligations on States Parties. The obligation to guarantee rights without discrimination is immediate in nature.\(^{60}\) In addition, those aspects of the rights which can be met through respecting peoples existing rights should be met right away. Any other aspect of the rights not imposing significant resource implications should also be immediately ensured.\(^{61}\)

In addition, the Covenant imposes an immediate obligation to ensure the minimum core of each right, and, in respect of the right to housing under Article 11(1), the minimum core of each of the seven elements of the right.\(^{62}\)

The obligation to ensure a minimum core does not mean that a certain proportion of a State Party’s population should enjoy the right, but rather that at least the core elements of the right should be enjoyed by each and every individual to whom the state owes an obligation under the Covenant. In particular, states must protect those groups who are most marginalised or disadvantaged.\(^{63}\) Any state failing to protect the minimum core of a right

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60 ICESCR Art 2(2).


under the ICESCR is *prima facie* in violation of its international obligations under the Covenant.\(^{64}\)

Any limitation on the rights under the ICESCR must also, under Article 4 of the Covenant, be determined by law, and be consistent with the purpose of promoting the general welfare in a democratic society. Further, any limitation under Article 4 cannot exceed the scope of compatibility with the nature of the ICESCR rights.\(^{65}\)

\[\text{ii) Maximum Available Resources}\]

Article 2(1) obligates states to mobilise the maximum available resources towards the realisation of ICESCR rights.

The CESCR has provided concrete guidelines on the obligation of states to make use of maximum available resources. While noting that states retain a margin of appreciation,\(^{66}\) the Committee will examine whether the measures the state has taken are 'adequate' or 'reasonable' the Committee will take into account the following (non-exhaustive list) of factors:

(a) The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;
(b) Whether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner;
(c) Whether the State party’s decision (not) to allocate available resources was in accordance with international human rights standards;
(d) Where several policy options are available, whether the State party adopted the option that least restricts Covenant rights;
(e) The time frame in which the steps were taken;
(f) Whether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were non-discriminatory, and whether they prioritized grave situations or situations of risk.\(^{67}\)

Although normally thought of in terms of a portion of the State Party’s budgetary allocation, resources should be conceived of more broadly. They can include other dimensions of public finance (such as monetary policy and government borrowing) and can encompass human, technological, organisational, natural and informational resources.\(^{68}\)

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\(^{64}\) General Comment 3, above note 62 at para 10.


\(^{66}\) Statement on Maximum Available Resources, above note 61 at para 11.

\(^{67}\) Ibid at para 8.

\(^{68}\) Elson, Balakrishnan & Heintz, ‘Public Finance, Maximum Available Resources and Human Rights’ in Nolan, O’Connell & Harvey, above note 65 at 14.
iii) **Progressive Realisation**

States must continually take steps towards the realisation of the rights contained in the Covenant, such that those aspects of the right which cannot immediately be ensured are met progressively over time. In the words of the CESC, States must ‘move as expeditiously and effectively as possible’ towards the realisation of the right.\(^{69}\) Steps must be deliberate, concrete, and targeted towards the increased enjoyment of the right.\(^{70}\)

Importantly, the obligation to take steps is not in itself limited or qualified by resource constraints or development issues.\(^{71}\) Thus, the improvement of rights enjoyment in a state is a continuous forward or upward obligation.

iv) **Retrogressive Steps as a Violation of the ICESCR**

The obligation of progressive realisation means that, except in a narrow range of exceptional circumstances, individuals should enjoy their rights more fully as time goes on. Retrogression or ‘backsliding’ in the enjoyment of rights, or in their legal protection, should not occur.\(^{72}\)

Thus the state should not adopt measures which will diminish enjoyment or access to rights,\(^{73}\) including through repeal of legislation which protects the rights under the ICESCR, or imposition of legislation which negatively affects the rights.\(^{74}\) Budgetary decisions which negatively impact rights enjoyment under the Covenant must be strictly justified.\(^{75}\)

‘Force majeure’ or lack of available resources may present a defence to the retrogressive measures.\(^{76}\) Where resource constraints are given by the state as a justification for retrogressive measures, the acceptability of those measures will be measured against objective criteria pertaining to the situation in the state. These criteria include:

(a) The country’s level of development;
(b) The severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;
(c) The country’s current economic situation, in particular whether the country was undergoing a period of economic recession;

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\(^{69}\) General Comment 3, above note 62 at para 9.
\(^{70}\) Ibid at para 2.
\(^{71}\) Ibid.
\(^{73}\) The Limburg Principles note that a state violates the right if ‘it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure’. *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1978)* E/CN.4/1987/17 at para 72.
(d) The existence of other serious claims on the State party’s limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict.
(e) Whether the State party had sought to identify low-cost options; and
(f) Whether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason.\textsuperscript{77}

In all cases, however, deliberate regressive steps will be carefully scrutinised by the Committee: they constitute a prima facie violation of the Convention, which states have the burden of proof to discharge.\textsuperscript{78} The Committee has repeatedly stated that a state which appears to be moving backward on the enjoyment of Covenant rights would have to provide a full justification that any retrogressive measure was strictly necessary,\textsuperscript{79} after considering all alternatives, and that the measure was ‘fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.’\textsuperscript{80} In other words, governments introducing regressive measures must show they have used the maximum of available resources to avoid taking such a step.\textsuperscript{81}

Crucially, moreover, regressive measures must not compromise the minimum core of the right.\textsuperscript{82}

The Committee has noted that policies in times of economic and financial crises may lead to retrogression, and that in such times any regressive policy must meet four requirements:\textsuperscript{83}

- First, the policy must be temporary in nature, enduring only for the period of crisis itself.
- Second, the policy must be necessary and proportionate, ‘in the sense that the adoption of any other policy or a failure to act, would be more detrimental to economic, social and cultural rights.’\textsuperscript{84}
- Third, the policy cannot be discriminatory in nature or effects, and must encompass ‘all possible measures, including tax measures,’ to ensure inequalities do not increase, and that particularly disadvantaged and marginalised individuals or groups are not disproportionally affected by the measure.\textsuperscript{85}

\textsuperscript{77} UN CESCR Maximum Available Resources Statement above note 61 at para 10.
\textsuperscript{78} General Comment 13 at para 45, Gen Comment 14, para 32, General Comment 15, para 19, General Comment 17 para 27. See further Nolan, Lusiani and Courtis at 124-5.
\textsuperscript{81} Sepulveda, The Nature of the Obligations under the ICESCR (Intersentia 2003).
\textsuperscript{82} See for eg General Comment 15, above note 80 at para 42, General Comment 14, above note 80 at para 48.
\textsuperscript{83} UN CESCR, Letter to States Parties dated 16 May 2012, Reference CESCR/48(9)/SP/MAB/SW.
\textsuperscript{84} Ibid.
\textsuperscript{85} Ibid.
• Fourth, the policy must identify the core of the right to be affected, and ensure that the core content is protected at all times.86

The conditions on austerity measures are thus strict and must be justified with reference to all rights, and all resources available. The minimum core must not be compromised, and the retrogressive measure must be the ‘least bad’ option available.

4. Failure to Fulfill Obligations for the Right to Housing in England: Areas of Concern

4.1 Homelessness

Homelessness is the paradigm violation of the right to housing, and its most obvious manifestation. The deprivation of any dwelling that a person may call his or her own, with adequate privacy and security of tenure, is denied to the person experiencing homelessness. For the homeless, there is no place from which he or she ‘may not at any time be excluded as a result to someone else’s say-so’.87 The homeless have no security of tenure. They do not enjoy the dignity and peace represented by the right as a whole.88

While those who make their homes or beds on the street are the visible face of homelessness, ranks of ‘hidden homeless’ are dependent on the charity of friends and family (who are often ill-equipped or resourced to accommodate them), or stay in often profoundly unsuitable temporary accommodation.

Homelessness often results in the violation of a host of other human rights, from privacy to health, and in the inability to exercise civic human rights such as the right to vote.89 Vulnerable groups (including ex-services personnel, the young, those with mental health issues, and women at risk of domestic violence) are at particular risk of experiencing homelessness, and, where they do become homeless, will be affected by the experience more severely.90

Homelessness, in its various manifestations, must be understood as a prima facie violation of the right to housing, including the minimum core of the right.

As such, the ‘exceptionally high’ levels of homelessness in England represent a serious concern with respect to the enjoyment of the right to housing under the ICESCR. The fact that levels of homelessness are rising, and more households are at risk of becoming homeless, points to a retrogressive step in the enjoyment of the right to housing, and thus a serious failing in the Government’s obligations under the ICESCR.

86 Ibid.
88 General comment 4, above note 35.
91 Bevan, above note 90 at 972.
4.1.1 Rising Levels of Street Homelessness

a) *Rough Sleeping*

An important estimate of street homelessness is provided by ‘rough sleeping’ statistics. The definition of rough sleepers captures those homeless people identified as:

People sleeping, about to bed down (sitting on/in or standing next to their bedding) or actually bedded down in the open air (such as on the streets, in tents, doorways, parks, bus shelters or encampments). People in buildings or other places not designed for habituation (such as stairwells, barns, sheds, car parks, cars, derelict boats, stations, or “bashes” which are makeshift shelters, often comprised of cardboard boxes).

The definition does not include people in hostels or shelters, people in campsites or other sites used for recreational purposes or organised protest, squatters or travellers.

Bedded down is taken to mean either lying down or sleeping. About to bed down includes those who are sitting in/on or near a sleeping bag or other bedding.\(^{92}\)

It is important to note that rough sleeping statistics present a snapshot of rough sleepers on any given night. They do not thus represent a total of people sleeping rough in any month or year.

Rough sleeping statistics therefore capture only the tip of the homeless iceberg, although they may represent many of its most vulnerable and deprived individuals, many of whom suffer from deep, multiple forms of social vulnerability and exclusion such as issues with substance abuse and mental health.\(^{93}\)

National figures on rough sleeping indicate that there has been a 55% increase since 2010,\(^{94}\) with approximately a 5% increase in 2012 and in 2013.\(^{95}\) The most recent figures, for Autumn 2014, indicate a total rough sleeping population of 2,744. This is an increase of 14% from the 2013 figure of 2,414.\(^{96}\)

More accurate figures are available for London, where rough sleeping doubled over the six years to 2013.\(^{97}\) The Autumn 2014 counts for London indicate a startling 37% increase over 2013.\(^{98}\) Outside London, the rise in rough sleeping was estimated at 7%.\(^{99}\)

*The year-on-year rises in rough sleeping indicate a serious violation of all elements of the right to housing, including its core elements. Moreover, the worsening situation illustrates serious retrogressive steps in enjoyment of the right.*


\(^{94}\) *Rough Sleeping Statistics England – Autumn 2014* above note 92 at 3.

\(^{95}\) Ibid.

\(^{96}\) Ibid.

\(^{97}\) Ibid.

\(^{98}\) Ibid.

\(^{99}\) Ibid.
b) Rates of Shelter or Hostel Use

Many homeless individuals will not be found bedding down as rough sleepers, as they are accommodated in night shelters or hostels which provide temporary, stop-gap accommodation to those who would otherwise find themselves on the street.

In England, ‘night shelters’ normally refer to basic spaces used for overnight accommodation in the very short term. Most are operated by charities, are often free, and may offer some food. In some areas, night shelters open only during winter months. 100 Almost half of providers offering beds to homeless individuals were operating at or above full capacity in 2013-14 101 72% of providers refused access to their services because all beds were full in 2013, a rise from 47% in 2012. 102

Hostels offer slightly more stable accommodation arrangements, often available only to homeless people referred to them from other frontline agencies. 103 In particular, hostel accommodation is used to provide temporary accommodation to homeless individuals to whom local authorities owe a statutory duty (discussed further below section 4.1.5). There are about 40,000 people in England using hostels for housing. 104

Hostels are not free, though can be paid for out of housing benefit. 105 They generally provide a shared bedroom, kitchen and bathroom facilities. 106 Hostel accommodation is not available to those who are not eligible for government welfare benefits, which affects its availability, particularly for recent migrants. It is generally not available to families or couples. 107

In the face of rising levels of homelessness and vulnerability to homelessness, there is a troubling drop in the number of hostel places available, with 6% fewer beds available in hostels in 2013 than in 2012, 108 and a further 5% fewer accommodation projects for single people available in 2014. 109 Overall, there is a drop of 3% in available beds for single homeless persons. This fall, though statistically small, means more people are pushed onto the street, further increasing unacceptable levels of rough sleeping.

Further, although hostel or shelter beds can be of profound importance, they do not fulfil even the core elements of the right to adequate housing. There is no security of tenure, no long term peace or security can be guaranteed. A right to bare shelter is of fundamental

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103 Shelter, How to get into a Hostel or Night Shelter at http://england.shelter.org.uk/get_advice/homelessness/homeless_and_on_the_streets/how_to_get_in_to_a_hostel_or_nighthostel
106 Ibid.
107 Ibid.
importance to the street homeless population, but shelter beds do not fulfil the State party’s obligation for the realisation of the right to adequate housing.

4.1.2 Cuts in Funding for Frontline Homelessness Prevention and Support

With growing levels of homelessness, including both street homelessness, discussed above, and ‘hidden’ homelessness, discussed in section 4.1.3 below, one might expect the government to respond with additional funding and other measures to provide increased frontline support for homelessness prevention, and for those who find themselves without a home.

However, front-line services in homelessness prevention and support have been under severe financial pressure in recent years. Many of these services have been cut, and these cuts are a contributory factor in the rising numbers of rough sleepers in England.

Local Authority budgets to support single homeless people had been cut by over a quarter in the three years leading up to 2013/14. Budget pressures, coupled with legislative reforms that weaken local authority duties to the homeless (or make it easier for those authorities to discharge their duty to the homeless), have resulted in inadequate frontline help for homeless individuals, even those who present with clear signs of need and vulnerability.

The inadequacy of frontline services for the homeless is also evident in the cuts in numbers of hostel and shelter beds, discussed in section 4.1.1.b) above. As many as 38% of these emergency and temporary accommodation services have seen their funding fall from 2012 levels in 2013. Almost half of those services affected have responded to the budget shortfalls by reducing the number of frontline staff.

Frontline and emergency services are of prime importance to the most vulnerable, and can make a profound difference to those at risk of the most severe deprivations of the right to housing. Cuts to such services represent a real indication of retrogression for obligations within the core element of the right to housing.

4.1.3 Rates of ‘Hidden’ Homelessness are Unacceptably High

a) Hidden Homelessness: Defining the Phenomenon

Hidden homelessness can be defined as the number of people not entitled to accommodation by the local authority, because they are not in priority need, but who have no accommodation that they are entitled to occupy or can reasonably continue to occupy.

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111 Homelessness Monitor 2015, above note 2 at 41.
113 See further section 4.1.5 below.
116 Ibid.
Thus it describes those who, having lost their own home, share with family or friends, often in accommodation characterised by insecure and poor living conditions. The definition can include would-be couples forced to live apart, as well as single homeless and hostel residents.\textsuperscript{117} While such individuals may be housed, they experience a profound level of tenure insecurity, and as such cannot be said to enjoy the right to adequate housing.\textsuperscript{118}

Hidden homelessness remains unacceptably high. On 2010 statistics, as many as 4% of households in the UK are ‘concealed’\textsuperscript{119} within another household, with concealed homeless households particularly high in London.\textsuperscript{120} Some 2.23 million households in England house a concealed single person; 265,000 concealed single parents and couples.\textsuperscript{121} The burden and insecurity can attend both the ‘host’ and concealed family or person. In fact, government figures illustrate that over a quarter of people accepted as homeless by a LHA became so as a parent, friend or relative was no longer able or willing to accommodate the person.\textsuperscript{122}

b) Overcrowding

Hidden homelessness is also tellingly illustrated by overcrowding statistics. Over 3%, or 685,000 households, in England were overcrowded in 2012.\textsuperscript{123} Overcrowding is not merely a matter of inconvenience for the families affected. The government imposes occupancy standards for the very reason that those living in overcrowded properties are subjected to inadequate living conditions on multiple levels. In addition to cramped conditions, there are knock-on effects in the enjoyment of other economic and social rights, such as the right to health, and the right to a private life, for example.\textsuperscript{124}

Overcrowding statistics can be calculated by measuring the number of bedrooms in a dwelling against the number of household members, taking into account ‘undesirable’ sharing.\textsuperscript{125} Overcrowded households were most commonly found in the private and social


\textsuperscript{118} Hohmann, above note 33 at 149.

\textsuperscript{119} Bramley above note 117 at 5.

\textsuperscript{120} Ibid.

\textsuperscript{121} \textit{Homelessness Monitor} 2015, above note 2 at xii.

\textsuperscript{122} Department for Communities and Local Government, \textit{Statutory Homelessness: October to December Quarter 2014 England} (DCLG, 26 March 2015) at 5.

\textsuperscript{123} \textit{Homelessness Monitor} 2015, above note 2 at 8.

\textsuperscript{124} See for example \textit{R (on the application of Bernard) v Enfield LBC} [2003] UKHRR 148 (Admin) (QB) and \textit{O’Donnell (a minor) and others v South Dublin County Council} [2007] IEHC 204.

\textsuperscript{125} \textit{English Housing Survey}, above note 4 at pg 28 box 2. For statistical purposes, the ‘bedroom standard’ is calculated as follows:

A standard number of bedrooms is calculated for each household in accordance with its age/sex/marital status composition and the relationship of the members to one another. A separate bedroom is allowed for each married or cohabiting couple, any other person aged 21 or over, each pair of adolescents aged 10-20 of the same sex, and each pair of children under 10. Any unpaired person aged 10-20 is notionally paired, if possible, with a child under 10 of the same sex, or, if that is not possible, he or she is counted as requiring a separate bedroom, as is any unpaired child under 10. This notional standard number of bedrooms is then compared with the actual number of bedrooms (including bed-sitters) available for the sole use of the household, and differences are tabulated. Bedrooms converted to other uses are not counted as available unless they have been denoted as bedrooms by the respondents; bedrooms not actually in use are counted unless uninhabitable.
rental sector, at 6% of households in those tenure categories. The rates of overcrowding in London are the highest in the country, at 8%.

c) Temporary Accommodation for Homeless Households including ‘Bed and Breakfast’ Accommodation

In December 2014, statistics record the highest number of households placed in temporary accommodation by local authorities in the last five years, and a 9% increase on the previous year. There were 61,970 temporary accommodation households at the end of December 2014.

Temporary accommodation is vitally important to keep homeless individuals and families off the street. However, it is often profoundly unsuitable in the long term. Problematically, the operation of homelessness legislation means that families in temporary accommodation can be disadvantaged in gaining access to permanent and stable accommodation, as they can cease to be in ‘priority need’.

Placement in temporary accommodation occurs when there is no suitable long-term (for example social or private rental) accommodation available for the household. Temporary accommodation varies widely, and is classed as either ‘self-contained’ or as having shared facilities. Shared facility temporary accommodation comprises hostels (see above section 4.1.1.b) and what is called ‘Bed and Breakfast’ (B&B) accommodation.

While for many ‘Bed and Breakfast’ accommodation conjures images of country weekends away, the Bed and Breakfast accommodation experienced by homeless or threatened homeless families in England cannot be understood in this cosy way. Rather, B&B accommodation offers extremely basic accommodation, normally with shared bathrooms and kitchens, often of poor quality.

Accordingly, the Homelessness (Suitability of Accommodation) Order 2003, states that B&B accommodation is not ‘suitable accommodation’ for families unless there is no other accommodation available and, even then, only for a maximum period of six weeks.

Nevertheless, in England, the number of families with dependent children placed in B&B style accommodation increased from 630 at the end of March 2010 to 2,040 at the end of December 2014 – an increase of 31% from a year earlier. Of these, 38% had been in bed

Households are said to be overcrowded if they have fewer bedrooms available than the notional number needed. Households are said to be under-occupying if they have two or more bedrooms more than the notional needed.

Ibid at 70. The bedroom standard, though used to calculate overcrowding rates for statistical purposes, is one of two calculations of overcrowding provided for in the Housing Act 1985 in ss 324 – 326.

126 English Housing Survey, above note 4 at 28 and table 9.
129 See Housing Act 1996 Part VII.
131 See the personal testimonials and descriptions of B&B Accommodation in the Local Government Ombudsman, Report on an Investigation into Complaint Numbers 12 009 140 & 12 013 552 against Westminster City Council (13 September 2013).
132 SI 2003/3326
and breakfast style accommodation for more than six weeks, an increase of 55% since the end of 2013.\textsuperscript{134}

4.1.4 Numbers at Risk of Homelessness Higher

In 2013/14, 280,000 households in England were at risk of homelessness, a figure which represents a 9% increase on the previous year.\textsuperscript{135} High housing costs, lack of adequate and affordable housing units, low wages, and cuts in state support mean that increasing numbers of families and individuals live in a situation of day-to-day insecurity.

Given that the combination of these factors places heightened pressures on already stressed and vulnerable households, the government should be taking measures to strengthen protection for these households.

Instead, recent legislative reforms, particularly those introduced under the Localism Act 2011 (which is discussed in more detail in section 4.1.5, below) represent a move towards a ‘stop-gap’ understanding of homelessness.\textsuperscript{136} The ability of Local Housing Authorities (LHAs) to bring to an end to their duties to the homeless without securing the consent of the person,\textsuperscript{137} for example, represents a move away from a more holistic protection of individuals and households at risk of homelessness which takes account of the underlying drivers for homelessness, and the tools for its prevention. The definition of homelessness represents a statement about what society accepts as the minimum standard of adequacy below which no person’s housing should fall.\textsuperscript{138} Accordingly, narrowing the definition of homelessness or taking steps to exclude state duties for those who were previously considered homeless, diminishes social inclusion and equality.

Therefore, such legislative weakening fits uneasily with the state’s obligation under the ICESCR to provide a right to adequate housing, rather than a right to mere shelter for those in particular crisis, as important as such assistance may also be.

4.1.5 Weakening of Local Authority Homelessness Duties

Local Authorities in England have a statutory duty to house homeless individuals and households. The legislative picture is complex,\textsuperscript{139} but specifically, the Housing Act 1996 imposes a main duty on Local Housing Authorities (LHAs) to house those who are unintentionally homeless, and who are in priority need.\textsuperscript{140} It covers not only ‘roofless’ individuals but those in overcrowded or other unsuitable accommodation and thus ‘threatened’ with homelessness.\textsuperscript{141} The legislation thus provides an important recognition of manifestations of homelessness other than rooflessness based on rough sleeping figures.

\textsuperscript{134} Ibid.
\textsuperscript{135} Combining the figures on prevention and relief with those on homelessness acceptances reveals the increased number of households at risk of losing their home. See Homelessness Monitor 2015, above note 2 at 60.
\textsuperscript{136} See for eg Bevan, above note 90 at 974.
\textsuperscript{137} See the discussion in 4.1.5 below.
\textsuperscript{139} See Cowan, Housing Law and Policy (CUP, 2011) at 151-172.
\textsuperscript{140} Housing Act 1996 Part VII particularly ss 190 – 196.
\textsuperscript{141} Ibid.
The threshold for making an application to be considered homeless is low, and, once made, imposes a duty on the LHA, which may include to provide temporary accommodation.\textsuperscript{142} ‘Gatekeeping’ by LHAs, though incompatible with the legislation,\textsuperscript{143} can significantly skew the figures of ‘homelessness acceptances’. \textit{Importantly, this does not mean that homelessness, or the numbers of those at risk of homelessness, is actually declining.}

The categories of intentionality and priority need serve to narrow the duty on LHAs. The categories of those in priority need are narrow, covering only: households with dependent children or a pregnant woman; those made homeless or threatened by homelessness due to a disaster such as flood or fire; those who are vulnerable because of old age, mental illness, handicap or physical disability or other special circumstance, those aged 16 or 17; those aged 18 to 20 and previously in care; those previously in Her Majesty’s Forces; or those who were forced to flee their home because of violence or the threat of violence.\textsuperscript{144} Intentionality operates so that some vulnerable individuals and families, and those who fall foul of the legislation in good faith through misunderstanding, for example,\textsuperscript{145} remain ineligible for assistance or rehousing.

As commentators note, the statutory safety net works very well in straightforward cases, but can significantly disadvantage complex or difficult cases, and places a significant burden on the vulnerable, who have to prove their vulnerability.\textsuperscript{146} Those who do not fall within the narrow categories of ‘priority need’ will be unable to benefit. Thus, this is a safety net in which significant holes exist.

\textit{This already problematic legislation is further weakened by recent legislative changes under the Localism Act 2011, which have served to make it easier for LHAs to discharge their homelessness duties, without necessarily remedying homelessness itself.}

Overall, these changes have a negative impact on the enjoyment of the right to housing in England. They impact particularly on security of tenure, affordability, and the potential adequacy of housing.

The Localism Act 2011 allows LHAs to discharge their duty to a homeless individual or household by making an offer of accommodation in the private rental sector, \textit{even if the homeless individual does not accept that offer}. This significantly weakens the position of the homeless individual, who was previously able to remain ‘statutorily homeless’ and gain, for example, temporary accommodation, while waiting to access permanent social housing.\textsuperscript{147} While the requirement that the private rental accommodation is ‘suitable’ takes account of factors which protect the elements of location, accessibility, and habitability, (such as

\begin{itemize}
  \item \textsuperscript{142} Cowan, above note 139 at 151 – 52.
  \item \textsuperscript{143} Ibid at 151 – 54.
  \item \textsuperscript{144} See Housing Act 1996 Part VII s 189 as amended by The Homelessness (Priority Need for Accommodation) (England) Order 2002.
  \item \textsuperscript{145} See for example Ujiagbe v Southwark LBC [2009] HLR 35.
  \item \textsuperscript{146} Thames Reach notes that: ‘The statutory safety net works very successfully where the proof of statutory rights is easy to establish; e.g. where you are required to prove that you have dependent children. It is less helpful where you have to prove not only circumstances, but vulnerability. For example a person with a physical disability has to prove that their disability makes them vulnerable “so that they may suffer in a situation where another homeless person would be able to cope without suffering”. A process of assessment is required to ascertain vulnerability and this is carried out by the local authority to which the person has applied.’
  \item \textsuperscript{147} Bevan, above note 90 at 970 – 972.
\end{itemize}
location, links with carers and family)\textsuperscript{148} and may act as a safeguard, the factors are not binding on the local authority, but merely indicative of the local authorities’ judgement on whether accommodation is or is not suitable.

Notably, it appears that LHAs are increasingly placing homeless households outside their own districts: at December 2014, just over one quarter of households in temporary accommodation were outside their local authority. The rate of increase of placements outside the local authority over the previous year was 31\%\textsuperscript{149} This is in potential violation of the location element of the right to housing under the ICESCR, if links with family, support or care networks, livelihood and educational opportunities are denied and disrupted.

It is worrying that some LHAs have reacted to the new law explicitly as a way to bring to an end all their homelessness duties.\textsuperscript{150} However, the desirability of bringing the LHA’s housing duties to an end is, itself, an aim of the new legislative scheme.\textsuperscript{151} Severe financial cuts facing Local Authorities operate as a significant push factor to use the legislation in this way.

The likely result of the new legislation, combined with the budgetary pressure facing Local Authorities, is that people will remain equally vulnerable and ill-housed, but now fall outside the scheme of legislative protection. Such a situation illustrates that the Localism Act amendments to the Housing Act 1996 may represent a regressive step in the realisation of the right to housing.

Given the very real concerns with the quality, security of tenure, and affordability of the private rental sector in England (discussed in greater depth below), reliance on this sector to ensure the right to housing of homeless individuals is unlikely to ensure adequate housing in practice. It is more likely to lead to a repeating cycle of homelessness and vulnerability.

In addition, the increased ability for LHAs to discharge their homeless duties more easily is likely to lead to households which were previously housed, even if in profoundly unsuitable conditions, becoming roofless and thus further swelling the ranks of the street homeless population. This is a profound diminution in the ability to enjoy the right to housing, and could only be considered a regressive situation of the enjoyment of ICESCR rights. This violation of the right to housing under the Covenant is made more likely by the fact that those at risk of homelessness tend to be vulnerable and marginalised, and thus less likely to be able to cope with the challenges of the private rental sector, which include weaker protection of tenure, higher costs, and poorer habitability or quality.\textsuperscript{152} These issues are considered further below, in Section 4.2.

**Key Recommendations: Homelessness**

1. The government should take immediate measures to end homelessness, ensuring an adequate supply of affordable, permanent, decent, and habitable housing, by building and/or facilitating the building of at least 250,000 new homes per year.

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\textsuperscript{148} Homelessness (Suitability of Accommodation) (England) Order 2012 No. 2601 Articles 2 and 3.


\textsuperscript{150} Bevan, above note 90 at 971. See for example Oxford City Council, *Homeless Discharge into the Private Rented Sector Policy* (2013).


\textsuperscript{152} See further Bevan, above note 90 at 972 – 3.
2. In the absence of an adequate supply of affordable, decent and habitable housing, the government should take immediate measures to ensure affordability in the short-term through:
   a. the adequate provision of state benefits to those unable to afford housing costs;
   b. sustained investment in existing affordable housing stock.

3. The government must take immediate measures to reduce the exceptionally high levels of street homelessness, including through:
   a. ensuring adequate numbers of hostel or shelter places
   b. ensuring adequately resourced frontline support is available to all homeless or threatened homeless individuals and families
   c. taking immediate legislative measures to strengthen security of tenure across the
      i. social housing sector; and
      ii. private rental sector\(^{153}\)
   d. taking policy measures to ensure housing is affordable in line with recommendations 1 and 2 above.

4. The government should strengthen legislation and take budgetary measures to
   a. ensure 'priority need' categories accurately reflect all real vulnerabilities and do not exclude those in real need;
   b. reinstate the crucially protective link between the discharge of LHA homelessness duties and the provision of social housing to ensure all vulnerable individuals and families remain adequately and securely housed.
   c. ensure Local Housing Authorities:
      i. cannot discharge their duties to the homeless through provision of private rental accommodation without the consent of the homeless person;
      ii. discontinue the use of inadequate, temporary accommodation such as bed and breakfast accommodation for homeless and threatened homeless individuals and, particularly, families.

4.2 Private Rental Sector

The private rental sector (PRS) in the UK has, in recent history, accounted for only a small part of the tenure picture.\(^ {154}\) However, the sector has grown rapidly, and set against a shrinking social housing sphere, the private rental sector now forms the second largest form of tenure in England, at 18% of the total households.\(^ {155}\) It remains a poorly regulated sector, with weak legislative controls.\(^ {156}\) For example, no checks are imposed on prospective landlords, and there is no requirement for a written tenancy agreement.\(^ {157}\)

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\(^{153}\) See also the Key Recommendations in Part B, Private Rental Sector, below.

\(^{154}\) Cowan, above note 139 at 51. See further Hughes & Lowe, The Private Rented Housing Market: Regulation or Deregulation? (Ashgate, 2007).

\(^{155}\) English Housing Survey, above note 4 at 8 and 10.

\(^{156}\) Cowan, above note 122 at 53-4.

\(^{157}\) Crisis, Response to the Communities and Local Government Select Committee Inquiry into the private Rental Sector (January 2013) at para 4.4
The UK government has increasingly presented the PRS’s expansion as based on lifestyle choice, and as a form of tenure suited to greater labour market mobility and flexibility.\textsuperscript{158} While this may be the case for some economically empowered renters,\textsuperscript{159} the overall context of private rentals suggests that the sector provides housing for a number of households, particularly families, for whom a private rental home is a source of anxiety over tenure security, cost, habitability, and quality, rather than a sought-after choice.\textsuperscript{160}

More than one quarter of those households living in the PRS are in receipt of Housing Benefit, which subsidises their housing cost. This is a substantial increase since 2008-9 (when the figure stood at 19%)\textsuperscript{161} indicating that issues of affordability in this sector continue, including for those who are employed.\textsuperscript{162}

The majority of tenancies in the PRS are regulated by the Assured Shorthold Tenancy. Assured Shorthold Tenancies set a minimum tenancy period of six months, after which the tenancy can be renewed, or the landlord can terminate at will with two months’ notice.\textsuperscript{163} The landlord can increase the rent at the renewal period as he or she sees fit. A small number of tenancies, pre-existing 1990, continue to be regulated by the previous, rent-controlled legislation.

Three major issues with respect to the PRS are: the extreme poor quality of a large proportion of the dwellings in the sector; the worrying practice of revenge or retaliatory evictions; and the overall issue of affordability in the sector.

4.2.1 Quality

It is widely accepted that the quality of property in the PRS is poor.\textsuperscript{164} The most recent government statistics reveal that 33% of the private rented sector is classed as ‘non-decent.’\textsuperscript{165} The proportion of non-decent homes has not declined for private renters, though improvements in quality have been seen across other tenure types.\textsuperscript{166}

It should be a matter of significant concern for the enjoyment of the right to housing that one third of households in the private rental sector are living in housing that is substandard to the point that it is unsafe or unhealthy.

Although the HHSRS risk assessment system provides a fairly sophisticated tool for the assessment of the quality of housing,\textsuperscript{167} monitoring of quality in the private rented sector


\textsuperscript{159} See van Lohuizen & Emmett, ‘The Flyers and the Tiers’ (Shelter, March 2015) at 11.

\textsuperscript{160} Shelter, Consultation Response: Shelter’s Response to the Review of Property Conditions in the Private Rented Sector (March 2014) at 2. See further Home Truths, above note 2 at 15.

\textsuperscript{161} English Housing Survey, above note 4 at 8.

\textsuperscript{162} 12% of working households in the PRS are in receipt of housing benefit, up from 9% in 2009-10, Ibid. at 8 – 9.

\textsuperscript{163} Housing Act 1988, particularly s 5, as amended.

\textsuperscript{164} See Cowan, above note 122 at 56; Gousy Safe and Decent Homes: Solutions for a Better Private Rented Sector (Shelter, 2015); Shelter’s Response to the Review of Property Conditions in the Private Rented Sector above note 160 at 3.

\textsuperscript{165} English Housing Survey above note 4 at 9.

\textsuperscript{166} Ibid.

\textsuperscript{167} Housing Health and Safety Rating System: Guidance for Landlords above note 30.
cannot in fact be considered rigorous.\textsuperscript{168} there are no mandatory checks on properties, and investigations by local authorities into the adequacy of a property will normally only be taken at the instigation of the tenant, the implications of which are discussed below in 4.2.2.

A rigorous quality control regime should lead to substantial increases in quality, and thus in enjoyment of the right to housing in England, yet there are no adequate, binding, measures currently planned by the government.

### 4.2.2 Retaliatory Evictions – a Failure of Security of Tenure

Forced evictions are, \textit{prima facie}, a violation of the right to housing under the ICESCR. Whether undertaken by private parties, or by state agents, any eviction taken for retaliatory or punitive purposes is in violation of the right.

Evictions, when carried out, should not negatively impact on other rights of the individual or family, particularly by rendering the person homeless. Yet, government statistics show that the loss of a private sector tenancy is now the single biggest push into homelessness in England.\textsuperscript{169}

A major issue in this area relates to the insecurity of tenure in the PRS, and is, significantly, tied to the extreme poor quality of the sector, with one third of homes within it being classed as non-decent (see further above section 4.2.1). This is the issue of the retaliatory or ‘revenge’ eviction.

A retaliatory eviction occurs where a private landlord takes steps to evict a tenant, normally by serving a s 21 possession notice under the Housing Act 1988 on an Assured Shorthold Tenancy,\textsuperscript{170} in response to a tenant’s request that the landlord repair or improve the property, or when the tenant has involved the local authority’s environmental health department in seeking improvements to the safety or quality of the property.\textsuperscript{171}

There are currently no real legislative or practical safeguards against retaliatory eviction. The relevant legislation has allowed landlords to evict tenants without establishing any tenant fault. The Deregulation Act 2015\textsuperscript{172} is a welcome legislative change, which will bring some safeguards into play if planned changes come into effect.\textsuperscript{173} The new legislation provides that where a Local Authority has served a landlord with an improvement notice after a tenant has complained to it about poor conditions, the landlord is prevented from serving a Section 21 notice for a period of six months. The legislative change is welcome, but must be strengthened, as it depends upon the Local Authority having adequate resources to inspect premises and serve improvement notices in every case. In the overall context of the under-resourcing of Local Authorities, and the scale of the problem of retaliatory evictions, it is unlikely that these resources will be forthcoming.

Moreover, the short minimum term of six months on Assured Shorthold Tenancies means that tenants have very little security of tenure in the first place. Practically, in a climate of undersupply (and thus high tenant demand) and with landlords able to demand increasingly

\textsuperscript{168} Fitzpatrick et al, \textit{The Homelessness monitor: England 2013} (Crisis, 2013) at 15.


\textsuperscript{170} Housing Act 1988, particularly s 5, as amended.

\textsuperscript{171} Wilson, \textit{Retaliatory Eviction in the Private Rented Sector – Commons Library Standard Note SN07015} (13 February 2015) at 3.

\textsuperscript{172} Deregulation Act 2015, ss 33 and 34.

\textsuperscript{173} The planned changes are scheduled to come into effect in October 2015.
high rents, there is an incentive for landlords to evict sitting tenants in order to raise rents for new potential renters.

Although there are no official statistics on retaliatory eviction, in part due to the unregulated nature of the private rental sector, major housing charities estimate that in 2014, over 200,000 private renters were evicted or served with an eviction notice ‘because they complained to their landlord, letting agent or council about a problem that wasn’t their responsibility.’\(^{174}\) In addition, the fear of retaliatory eviction further disadvantages tenants who would otherwise seek repairs or improvements to a property,\(^ {175}\) and many may face a stark choice between inadequate, unsafe and unhealthy housing, and the risk of losing their home.

### 4.2.3 Affordability

The average rent in the PRS is almost double the average rent for houses in the social rental sector.\(^ {176}\)

A quarter of those renting in the private sector are dependent on housing benefit to pay their rent. This is a substantial increase, from 19%, in 2008-09.\(^ {177}\) A number of these households – 12% - were reliant on housing benefit despite being in work.\(^ {178}\)

Statistics show that the shorter one’s tenancy is, the more likely one is to be paying a higher level of rent.\(^ {179}\) Accordingly, affordability is impacted by short term tenancies, and thus lower protection of tenancy is not only a security of tenure issue but an affordability issue, illustrating how all elements of the right to housing are interrelated and enjoyment of one will impact on enjoyment of others.

### Key Recommendations: Private Rental Sector

1. The State must take immediate legislative measures to strengthen security of tenure in the private rental sector including through:
   a. Stronger and better resourced legislative measures to prohibit retaliatory evictions, including through preventing landlords from bringing eviction procedures as reprisal for well-founded maintenance and improvement requests where a property is in a serious state of disrepair or serious hazards are present;
   b. legislative measures to prohibit arbitrary or retaliatory rent increases

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174 Gousey, ‘Can’t Complain’: Why Poor Conditions Prevail in Private Rented Homes (Shelter, March 2014). The RLA contests these figures, and cites alternative grounds upon which landlords have sought to evict. See Wilson, above note 171.

175 Shelter, a major housing charity, reports that 12% of renters have not asked for a repair to be carried out or challenged a rent increase, for fear of eviction. Shelter’s Response to the Review of Property Conditions in the Private Rented Sector above note 160 at 25–26. See further Gousey, ‘Can’t Complain’ above note 172; Gousy Safe and Decent Homes above note 164.

176 Weekly average rent in the social housing sector was £89 compared with £183 in the private sector. See English Housing Survey, above note 4 at para 1.31.

177 Ibid at 1.36.

178 Ibid at 1.42.

179 Ibid Annex Table 3 at p 50.
c. Increasing the minimum tenancy term of private rental agreements to give tenants security and stability.

2. The State must take immediate steps to ensure housing in the private rental sector meets the ‘decent homes’ standard including through:
   a. immediate and rigorous monitoring of the safety and quality of housing in the sector
   b. taking progressive steps, alone and in conjunction with the private sector, to improve the quality of housing in the sector through new building and improvements to existing housing stock.

3. The state must take steps to ensure affordability in the private rental sector including through
   a. stimulating and creating new housing across tenure types
   b. providing tenants with immediate legislative protection against arbitrary or retaliatory rent increases.
5. Conclusions

The overall context for the enjoyment of the right to housing in England is one of crisis. Exceptionally high numbers of people are homeless, or vulnerable to homelessness. The current housing environment is characterised by profound issues of lack of supply, high and further increasing housing costs, lack of security of tenure, and homes of such poor quality that they are unfit for habitation. These issues plague all of England’s main housing tenure types: the owner occupied, the private rental, and the social housing sector. Housing insecurity affects not only people on low incomes, but broad swathes of the English population, who currently live in situations of insecurity and uncertainty.

In this context of crisis, the government is manifestly failing to meet its obligations to ensure the right to housing of its population, so that everyone can enjoy a standard of living in homes that are adequate, safe, and secure.

These failures can be seen strikingly in the areas of homelessness and in the private rental sector.

Homelessness is increasing, with numbers of rough sleepers, those using shelter and hostel accommodation, and the ‘threatened’ homeless rising. Rather than responding by strengthening the safety net for these most vulnerable of individuals, the government has cut back funding and weakened existing legislation. These actions represent regressive steps, a serious failure to respect, protect and fulfil the right to housing as required by the government’s obligations under the ICESCR.

In the private rental sector, as many as one third of households are living in non-decent accommodation. The cost of a private rental is high, and for many, state support is needed to meet that cost even if the household is working. Supply can only be considered inadequate. The combination of these factors results in a private rental sector which is, despite government statements to the contrary, often the tenure of last resort.

In these two areas, the government must respond by taking steps, in line with the key recommendations outlined in this report, to end the housing crisis and fulfil its obligations under the ICESCR for the right to housing of its population.
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