

The relevance of current legislation in its relation to the problems



This essay tries to address the relevance of current legislation in its relation to the problems of homelessness. First, a brief synopsis of some of the historical and current, relevant legislation is described; parts of that legislation are discussed in relation to homelessness; and finally some of the weaknesses are discussed.

It is clear that homelessness and housing problems are not a new phenomenon. To chart the history of homelessness problems the easiest starting point is the Middle Ages. Religious foundations were the staple environments to assist the homeless of that period until King Henry VIII abolished this help.

It was considered to be a religious duty for all Christians to undertake the seven corporal works of mercy. ¹ After the establishment of the Church of England, many of the old values and moral expectations disappeared so it became necessary to regulate the relief of poverty by law. It was during the reign of Queen Elizabeth I, daughter of King Henry VIII, that a spate of legislation was passed to deal with the increasing problem of raising and administering poor relief². 'Poor Law' of 1601 was established. This was a basic taxation of the rich to encourage the home parishes to supply housing. Invariably this led to the instigation of workhouses and the impoverished living standards associated with it.

However, this form of assistance carried on until the Rent Act of 1915 and the 1939 Rent Act both of which were replaced by the Rent Act of 1977, and this Act is still relevant today, but is being phased out as tenants quit or die.

The National Assistance Act 1948 is passed, Poor Law is abolished and the National Health Service began.

But it wasn't until the 1960's that the awareness of the homeless dilemma was given any great thought and in 1972 the Local Government Act was introduced giving the local housing authorities powers to assist the homeless. However the Secretary of State could also impose housing duties on social services authorities thereby causing confusion as to who was supposed to deal with the matter.

It took a further five years for the 1977 Private Members Bill to be introduced. This was created in association with Shelter, a strong political pressure group who persuaded Steven Ross MP to push the Bill through. The government gave assistance here and duties were imposed on the local housing authorities to assist with homelessness. However, there was a strict criteria to satisfy to be labelled homeless, this criteria became part of the 1985 Housing Act (Part III), re-enacted and amended by the Housing Act 1996 and further amended by the Homelessness Act 2002.

The Housing (Homeless Persons) Act 1977 was also introduced and was similarly consolidated into the 1985 Housing Act (Part III). The Rent Act 1977 offered (1) Protection from eviction at end of a tenancy, which is artificially extended by legislation for tenancies commenced prior to 15. 1. 89.

The landlord has to prove grounds to get the tenant out with the assistance of a court order. Also succession to tenancy by the deceased's family i. e. spouse/child, which could lead to security for three generations; and (2) High rents could not be charged by unscrupulous landlords "Rachmanism". These <https://assignbuster.com/the-relevance-of-current-legislation-in-its-relation-to-the-problems/>

two forms of protection are inseparable, as it nullifying the tenancy; and Protection from Eviction Act 1977. These two offered protection of security of tenure for the tenant and protection from eviction/harassment of a licensee or tenant in both the public and private sectors.

The strength of this tenancy may also have discouraged landlords from letting their properties.

Although previously controlled by the local authorities, the 1985 Housing Act offered security of tenure (s. 82) and succession by a spouse or family member (s. 87) in the public sector. 'Right to Buy' your council home is pursued by a vast amount of tenants, depleting the housing stock. This Act was incorporated into the Housing Act 1996 and later into the 2002 Homelessness Act.

The Housing Act 1988 is the basis of the current structure for private sector tenants. It follows the pattern established by the Rent Act 1977 in relation to grounds for possession. Although the emphasis is on the mandatory grounds³, not the discretionary grounds⁴. Some of the considerations, which apply under the Rent Act, also apply to the Housing Act.

There are now two types of tenancy, Assured and Assured Shorthold. Security of tenure and protection of rent levels are now split. Assured Tenancies protect a tenant's status and Assured Shorthold Tenancies get protection regarding high rent levels only. At the end of the tenancy if you are given written notice to quit, you are out.

The Housing Act 1996, Part I, in the private sector created Assured Shorthold tenancies in favour of the Assured Tenancy without the need for written notice to the tenant to convert and assured tenancy to an assured shorthold tenancy (s. 20). Thereby limiting protection to tenants to a minimum of six months. An Assured Tenancy could still be created but this had to be worded specifically and carefully.

In the public sector, The Housing Act 1996 Part VII defines the type of help local authorities must offer homeless people. Such as a duty to secure accommodation, providing advice and assistance (s. 179), referrals to other housing providers (s. 180), being placed on the housing waiting list, or being informed about local letting schemes.

Succession is again limited compared to the Rent Act 1977 (s. 17). The Act further defines a homeless person (s. 175), their application for assistance to the local authority (s. 183) and the local authority's enquiries into their case (s. 184).

The duty to accommodate is contained in s. 188 and the priority need category listed in s. 189. Matters relating to intentionally homeless and duties to non-intentionally homeless are shown in s. 192-196. And referrals to other local housing authorities are under s. 200 and 201. There is also a right to review (s. 202 and 3) and a right to appeal (s. 204). The matter of suitable accommodation is under s. 210. And co-operation between relevant housing authorities is noted under s. 213.

This Act is extensive and well thought out and denotes to start to the demise of homelessness.

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However, it is the Homelessness Act 2002, which has put more emphasis on the tackling of homelessness. This Act is in addition to the Housing Act 1996 and therefore has to be read in conjunction with it.

The new Act, however, appears to have created hurdles for a homeless person to jump over to obtain a duty from the housing authority. For example, you have to show you are homeless, or are threatened with homelessness within the next 28 days (s. 175(4) Housing Act 1996), within the meaning of the legislation, in the priority need category, you have not made yourself intentionally homeless and that you have a local connection to the area. There is no real assistance for asylum seekers or their dependants who have accommodation available to them in the UK, even if this is only temporary accommodation.

Further, the priority need category defines a number of situations whereby a person can be categorised as being in priority need (s. 186 Housing Act 1996). Someone with dependant children residing with them, the vulnerable: through old age, mental illness or handicapped, pregnant⁵ or resides with pregnant woman, actual or threatened homelessness through an emergency situation such as fire or flood but does not include unlawful eviction⁶.

Violence has been given a very generous approach here.

Order 2051 adds further vulnerable categories⁷: 16 or 17 year olds not in care or living with family; 18-20 year olds who have been fostered or in a local authority care when 16/17. 21 years and older, who were cared for by the local authority or fostered in past. Ex-servicemen, ex custodial sentence or on remand, sufferers of domestic or other violence have all been added to

this category. However, there is no mention of the single person 'Joe Average', who is over twenty-one, has not been in foster or local authority care, is not pregnant or the partner of a pregnant woman. Will this lead to rough sleeping by this category of individuals replacing the existing rough sleepers on the streets? And/or will it encourage parents to push their children from their homes knowing that they will be supplied temporary accommodation, which may invariably lead to a council property and the benefits they offer?

Homelessness is a complex problem; the circumstances of homeless people vary greatly from shortages of housing, entitlement to housing, personal situation such as alcoholism or psychiatric illness, unemployment, bereavement and marital breakdown. People in these situations only become homeless if they are excluded from housing, or do not have enough resources to secure alternative housing.

It is clear that in the private sector, the Rent Act of 1977 gave a tenant more rights than those of the 1988 Housing Act and the 1996 Housing Act. Clearly, if a tenant is in trouble, say with rent arrears, the Assured Shorthold Tenancy does not protect them and eviction would probably be imminent. Albeit with relevant notice and the following of procedures.

If the tenant then cannot secure further accommodation, he will invariably turn to the local authority and voluntary organisations for assistance. It is easy to see how this could escalate to numerous tenants fighting for accommodation with the authorities, especially in areas where the supply of accommodation is limited and expensive (especially the south of England).

Thus increasing the burden. Further protection for the tenant, in relation to their security of tenure, could possibly avoid this situation.

This, of course, requires contrasting with the view of the private landlord. Without whom there would be less rented properties available anyway. By their prudent investment, in the property market, there needs to be a reciprocal financial reward and access to the property or properties they own. This however requires balancing with the needs of the tenant, so that it doesn't escalate to the historical state of 'Rachmansim'.

The current private sector legislation offers little help in solving the issue of homelessness in the long term, but may, in fact, be distorting the size of the issue by accommodating tenants in run down, unhealthy housing. The tenant's lack of knowledge of the law may discourage them from turning to the local authorities and voluntary organisations for assistance or to utilise facilities such as the rent appeals to the Rent Assessment Committee.

The 2002 Homelessness Act offers clearer definitions than the Housing Act 1996, in relation to the acts of the private landlord and, especially, the local housing authorities, in assisting the homeless person.

Under s. 179, 180 and 181 1996 Housing Act, every local housing authority must ensure advice and assistance is freely available to assist and/or prevent homelessness including financial assistance to other voluntary bodies who assist in homelessness matters.

The authorities must also conduct their functions using the guidelines laid down under the Code of Guidance (s. 182). This includes matters such as bed

and breakfast accommodation not being suitable for families with children. To ignore the Code may mean that a decision is struck down 8. There is also a duty of the local housing authorities to formulate a homelessness strategy, to include reviewing the homelessness situation in their district and to publish a review of the results obtained from the reviews to include their measures in prevention of homelessness. This transparency can only be advantageous to the general public.

There are further provisions for the accommodation of the homeless, the allocation of housing and matters relating to appeals to name a few.

The Housing Green Paper, Quality and Choice - a decent home for all, was published by the government for consultation on 4 April 2000. The Green Paper was the most comprehensive government review of housing policy for over twenty years. The government then carried out an extensive analysis of the 1, 099 responses to the Paper. There was then announced a Spending Review for Housing, which delivered the resources to implement the proposals.

The main objectives were to offer a wider range of landlords, providing high quality services at a fairer rent thereby increasing the choice for the tenants. Further investment to local authorities to improve existing housing stock and support for the transfer of council housing to non-profit making registered social landlords. An increase in Private Finance Initiative schemes for housing, reforming lettings policies to give tenants more choice over where they live, reforming social sector rents to make them fairer, more coherent and affordable. Promoting best practice for landlords in the private rented

sector, and considering options to tackle the minority of bad landlords. Promoting more affordable housing, in particular through a starter home initiative. Improving housing benefit to give better customer service, and tackle fraud and error. Tackling housing related social exclusion, for example, rough sleeping.

The Housing Bill was introduced into the House of Commons in December 2003 and it is expected to receive Royal Assent by the end of this year. Its aims are to help the most vulnerable in the private sector and further strengthen the government's drive to meet its 2010 decent homes target. The provisions of the Bill are to tackle low housing demand and problems of anti-social behaviour, deal with poor housing, help with the supply of affordable housing, reform the home buying and selling process and offers tenancy succession to same sex partners. Shelter agrees with the select committee's recommendation that tenancy rules on succession should be updated, so that unmarried partners and unregistered same sex partners have the same rights as married couples⁹. There are also measures to discourage Right to Buy abuses and a licensing system for houses in multiple occupation. ¹⁰ Shelter further proposes that the Bill should focus on the private rented sector. At a time when the shortage of affordable housing has reached crisis levels in many parts of the country, the sector could make a much greater contribution to meeting housing need by increasing the availability of affordable accommodation for key workers and providing decent homes for those on low incomes. ¹¹

According to the English House Condition Survey, 31 per cent of private tenants live in poor conditions. Shelter therefore strongly supports the measures aimed at improving standards in the sector. 12

Kate Barker's 'Review of Housing Supply' core recommendations have been accepted by Gordon Brown to include a possible windfall tax on profits from land sold for development. In Kate Barker's review, it was noted that landowners were making gains as a result of the granting of residential planning permission. A tax on these profits could be used to fund affordable housing. Of which, it was stated that to keep up with demand, 100, 000 new homes would be needed year. In the south east alone it is estimated that 17, 000 are required. 13 14 These recommendations have the appearance of the real estate system in the USA.

She further recommends reforms of the planning system and calls for a "Community Infrastructure Fund" of £100-200 million to be created to overcome infrastructure blockages and facilitate development. Having one body responsible for housing and planning and releasing more public sector land will help meet the demand for housing and thereby reduce the house price inflation currently being experienced. 15 16

Shelter also agree with the Barker Report's recommendations together with the changes recommended by the Planning Green Paper.

Current legislation is clearly extensive, however, it does not appear to go far enough, nor can it alone, if eradication of homelessness is the goal.

Generation of income in deprived areas would assist in the general attitude of the residents, thereby increasing the likelihood of motivation, possibly to <https://assignbuster.com/the-relevance-of-current-legislation-in-its-relation-to-the-problems/>

the owner-occupier sector, leaving quality properties available for the homeless. This invariably has a knock-on effect on the economy too. As people move, employment in various sectors is regenerated by the purchase of new items to furnish and decorate the home, removal costs, solicitors and estate agent's fees and the like.

Community initiatives could also be introduced, especially in the run down housing estates, to promote education, training, crèche facilities and thereby assisting with social inclusion 'the community spirit'. Legal representatives working pro-bono would clearly be advantageous in these areas, offering advice on all aspects of the law, if only for a limited period or compulsory for new trainee lawyers within their two-year period.

Clearly, the issue of vandalism, land being used as a dumping ground, houses laying empty, drug problems and the like would be dealt with at the community level if and where possible. Most people want to live in a nice area, with well-tended gardens and nice neighbours. Not in fear of crime or depressed at the views offered by your surroundings and it is often the most vulnerable that end up in these sort of areas. They require the most help and get a roof over their head and nothing more. Encouragement of this kind promotes well being and stability for the individuals, which the vulnerable are most in need of.

If it is land that is required, rather than using up 'green belt' areas, another solution may be to buy up, on a Compulsory Purchase Order, run down terraced housing, preferably already empty and rebuild small housing developments for first time buyers. This could be done on purchase/lease

basis, thereby cutting the cost of house buying for the young. This option would be more beneficial than the current state of affairs where the affluent of the south are buying up these properties, especially in the north, to rent in the private sector.

In this area alone, properties of this type can be bought for as little as £10,000. Obviously, if there were residents in these properties, they would need re-housing. Rebuilding a property in this way would deal with depressed areas, encourage people back to the inner cities and thereby increase the economic status of the area and that city too.