

SCOTTISH HOUSING DAY



**HOUSING AS A
HUMAN RIGHT**



SCOTTISH HOUSING DAY is about celebrating the impact that housing makes to the lives of people and communities across the country, as well as communicating to people about their housing options.

This year, for the 4th annual Scottish Housing Day, we are recognising and celebrating the role of housing as a human right.

To mark the day, we (the below organisations) have produced this discussion paper setting out a possible vision for housing as a human right in a Scottish context. To help inform the paper, three focus groups were held in Glasgow, Edinburgh and Stirling attended by tenants, landlords, housing professionals and home owners in June 2019. In total, 20 people took part in these groups.

In addition, we conducted an online survey that was shared amongst the membership of the Scottish Housing Day steering group and the housing sector; forty-eight people responded. Participants in both the survey and focus group were self-selecting and not necessarily representative of the housing sector at large. The questions asked in both the survey and the focus groups can be found in the Appendix.

The views and opinions reflected in the focus groups and survey were considered as part of a wider review on housing as a human right in this paper. However, this paper should not be considered as either a summary of survey responses or necessarily the views of those who participated in the focus groups.

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HOUSING AS A HUMAN RIGHT

WHY HOUSING IS A HUMAN RIGHT

In 2019, we celebrate a number of anniversaries: 30 years since the fall of the Berlin Wall, and 25 years since the end of apartheid in South Africa. But what also makes 2019 notable for many is the centenary of the Housing and Town Planning Act – or the Addison Act, as it is commonly known. Rooted to improving the health of the nation, this was the piece of early 20th century legislation that started the construction of subsidised social housing across the UK.

This legislation made housing a national responsibility, and local authorities were given the task of developing new housing and rented accommodation where it was needed by working people. It was the first meaningful piece of legislation recognising the central role that housing plays in the lives of citizens and communities, and the responsibility of the government to provide this for the common good.

Thankfully, we have come a long way since the Addison Act. Internationally, the right to adequate housing was recognised as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights, and in the 1966 International Covenant on Economic, Social and Cultural Rights. It was later included across many other international human rights treaties.¹

- “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.” – Universal Declaration of Human Rights, Article 25

¹ https://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/housing_is_a_human_right

While the International Covenant on Economic, Social and Cultural Rights states that everyone has a right to adequate housing, and that this should be ensured to all persons irrespective of income or access to economic resources.

- “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.” ICESCR, Article 11

Housing conditions across Scotland are incomparable with those a century ago, and we are in the midst of an affordable housing boom with a target of 50,000 affordable homes being provided

Human rights law recognises everyone’s right to an adequate standard of living, including adequate housing.¹

For housing to be adequate, it must, at a minimum, meet the following criteria:

- Security of tenure
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility
- Location
- Cultural adequacy

¹ <https://unhabitat.org/the-right-to-adequate-housing-fact-sheet-no-21rev-1/>

between 2016 and 2021.² However, we still live in a country where the demand for housing of all tenures far outstrips supply, meaning long waits on housing lists/in temporary accommodation, upwards pressure on house prices and the

² <https://www.gov.scot/publications/infrastructure-investment-plan-2015-progress-report-2017/pages/14/>

increasing cost of lets in the private sector. For example, a two-bedroom flat in the Lothians now costs on average £946 per month – an increase of 43% or £281 since 2010. Despite progressive legislation and the concerted efforts of the housing sector, homelessness and rough sleeping are on the rise³ and intergenerational inequality is increasing.

Housing has a central role to play in addressing the challenges facing Scotland today, be it improving health and education outcomes, tackling climate change and poverty or supporting economic growth. But the experience of those sleeping rough on our streets or friends' sofas, young children living in temporary/overcrowded accommodation and families forced into poverty to cover housing costs highlights the need for housing to be truly recognised among the most basic of human rights itself.

Housing, for too long, has been considered secondary to health and education. Any lasting solution to the housing crisis must recognise and embrace the concept of housing as a human right. We must identify and agree what this means for Scotland and Scottish policy so that every one of us can live somewhere in security, peace and dignity, supported by a system that acknowledges that we all need more than a house, we need a home.

We, of course, recognise that the UN criteria might not be achieved. However, they can be realised over a reasonable period. Our sector must support the Scottish Government in taking active steps to improve housing rights in Scotland.

3 <https://unhabitat.org/the-right-to-adequate-housing-fact-sheet-no-21rev-1/>

4 <https://www.gov.scot/publications/private-sector-rent-statistics-2010-2018/>

WHY THIS PAPER?

Ahead of our probable departure from the EU, the Scottish Government is considering what legislative protections are needed to embed social, cultural and economic rights – including the right to adequate housing – in the Scottish legal system. Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People, and Professor Alan Miller of Strathclyde University, will jointly chair this National Taskforce for Human Rights Leadership.⁵

The scale of the taskforce's agenda is daunting. To put in place a legislative framework supported by resources to ensure Scotland is a world leader in putting human rights into practice will not be easy.

But incorporation matters. By moving the issue from an international to a national arena, we can ensure our Government considers human rights fully in its policy deliberations. Crucially, it means we can provide citizens with a legal basis to challenge councils, landlords and the government through the courts if they violate the minimum set of rights.

Yes, this is a challenge; legislation will be only the first step and educating the public and judiciary about the value of this approach will take time. However, we know it can work. We know from experience in Scotland and in other countries the impact a rights-based approach to housing can have and we have noted both an existing and an imagined scenario where a human rights focus would support citizens in Scotland in this paper.

Furthermore, while the Scottish Government is developing its 20-year vision for housing⁶ we believe there is a value in the sector setting out what it considers to be the base requirements of what a housing system should look like.

This paper sets out a collective vision as to what our housing system could look like if it was underpinned by human rights.

5 <https://www.gov.scot/news/new-national-taskforce-to-lead-on-human-rights-in-scotland/>

6 <https://www.gov.scot/publications/housing-to-2040/pages/purpose-of-vision-and-principles/>

CONTEXT TO CONSIDER

Before considering the detail and application of a human rights framework for Scotland, it is helpful to review recent housing trends and how the success and failure of existing policy and legislation can shape a human rights framework for housing.

Demand and supply: The total number of new homes being built slumped by over 40 per cent during the last recession and remains 20 per cent down on 2007 levels. This means that, despite the £3 billion investment in affordable housing over the current parliament, there remains considerable demand for housing of all tenures in Scotland. This is reflected in the 130,000 households⁷ on the social housing waiting list and wider forms of hidden homelessness such as concealed households, sharing households and overcrowded households.

It is clear that we still need significantly more homes but any new legislative obligation must look across all sectors and the types of home that are needed (including size, accessibility and energy-efficiency) in the places where people want to live.

Encouragingly, in firsts for modern planning legislation, the Planning (Scotland) Act 2019 requires the setting out of targets for the use of land for housing, but policy will have to outline how achieving numerical targets can be done in a way which better enshrines housing as a human right in Scotland.

Homelessness: Since 2008 there has been a general reduction in homelessness. However, the increase⁸ in homelessness applications in the last two years suggests that the current initiatives on prevention have been exhausted. New programmes on rapid rehousing and Housing First have the potential to support those with the most acute housing needs but only if supported by the necessary resources and funding. This must go beyond the development of new supply, ensuring that there are enough trained housing professionals and support staff to help households maintain their tenancies. Greater focus must also be placed on the medical and mental health needs of

7 <https://www.gov.scot/publications/housing-statistics-scotland-2018-key-trends-summary/pages/13/>

8 <https://www.gov.scot/publications/homelessness-scotland-2018-2019/>

people who have been repeatedly failed by the system, finding themselves in a cycle of homelessness.

Housing quality: In recent years, the quality of housing stock has increased substantially with concerns around damp almost eliminated.⁹ However, issues with levels of energy-efficiency and disrepair in existing homes remain. In addition, some social landlords let properties with no floor coverings, window coverings, white goods, furniture, and without being decorated. And although some tenants are offered starter packs or directed to support such as the Scottish Welfare Fund, not all housing needs are met, despite evidence showing that a lack of adequate furniture can drive tenancy failure.¹⁰ As such, we must consider expected minimum cross tenure standards and the role that human rights has to play in safeguarding them.

Affordability: The requirement for large mortgage deposits, wage stagnation, a growing population, greater land use demands and historic under supply has increased pressure on housing prices.¹¹

While cuts to support with housing costs for private renters on low incomes and the introduction of a benefit cap all mean it is becoming increasingly difficult to find a home that is affordable. Furthermore, barriers to new housing supply are contributing to growing wealth inequality, especially in high demand areas and those who do manage to find a home often have to cut back on other essentials to cover housing costs.

In Scotland, 20% of households are living in poverty after housing costs¹² and we are seeing the consequences of this un-affordability manifest itself in terms of tenants accepting poorer quality homes, rent arrears and high rates of evictions.¹³

9 <https://www.gov.scot/publications/scottish-house-condition-survey-2017-key-findings/>

10 Investigating Tenancy Sustainment in Glasgow, Pawson et al, 2006

11 <https://www.gov.uk/government/publications/uk-house-price-index-scotland-january-2019/uk-house-price-index-scotland-january-2019#price-change>

12 <https://www.gov.scot/news/poverty-and-income-inequality-increasing/>

13 <https://www2.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/HSfS/Evictions>

SUCCESS TO DATE

There is a great deal to consider in the context of a housing and human rights framework in Scotland. However, we benefit from the fact that any new framework will build on the changes and improvements in the housing sector since devolution in 1999.

Over the last 20 years we have seen a long-term reduction in the level of disrepair in housing stock, with 60% of all properties now meeting the Scottish Housing Quality Standard (SHQS) and 91% of properties free from damp and condensation¹⁴. Similarly, 42% of Scottish homes are rated as EPC band C or better.

Equally, on the issue of tenancy security we have legislated to end fixed term tenancies and no-fault evictions in the PRS, with rent increases also limited to once per year.¹⁵ The legislative changes are less than two years old, so the impact is still being evaluated. However, the move away from fixed term tenancies should provide greater security of tenure to PRS tenants.

We have undertaken a number of policy measures to end homelessness, including placing a duty on local authorities to publish strategies to prevent and alleviate homelessness, a duty on RSLs to assist in rehousing homeless households, abolishing priority need in 2012 and more recently a requirement of all local authorities to produce Rapid Rehousing Transition Plans with £50m of funding identified in an 'Ending Homelessness Together' Fund.

And as noted above, we are in the midst of the largest affordable home building programme in a generation, with 50,000 affordable homes funded with £3 billion from Government and a further £3 billion investment from social landlords. This investment, matched with an end to Right to Buy, will lead to a net increase in social housing stock in Scotland. But this 50,000 figure does not include private sector housing (whether for rent or purchase). Unless there is a firm

commitment to increase housing of all tenures in the next Parliament, there is concern that much of the progress made on housing rights will be undermined.

Case Study: West Cromwell, Citadel and Persevere Courts Residents Association, Edinburgh¹

Tenants identified long-standing problems that could be tackled by a human rights framework and made the case to councillors and officials for improvement to their homes. The council then agreed to meet the residents within a month and develop a plan for improvements. Tenants then undertook a follow up survey to measure progress and report back on the human rights-based indicators they identified.

The Scottish Human Rights Commission supported the council by providing human rights training to council officers.

¹ <http://www.scottishhumanrights.com/media/1533/housing-pdf-web.pdf>

¹⁴ <https://www.gov.scot/publications/scottish-house-condition-survey-2017-key-findings/>

¹⁵ <https://www.gov.scot/publications/private-residential-tenancies-tenants-guide/>

OUR VISION

We need homes that are fulfilling and a housing system that meets the needs and aspirations of households and offers both quality and choice. As our lives change, we need a human rights framework that supports our evolving housing requirements and enables us to live where we choose.

We also recognise that human rights are interdependent, so the right to housing cannot be separated from rights such as education and health. By strengthening housing rights, we strengthen other accepted rights, improving outcomes across a whole range of policy areas.

International frameworks for housing as a human right already exist in the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁶ as well as the Convention on the Rights of the Child (CRC)¹⁷ which sets out a requirement and responsibility for all children to have adequate housing.

With Scottish statute now on the cards, this paper is intended as part of the debate of how new legislation should be framed and how it should be realised in policy and practice.

We need more than houses, we need homes and our vision for a human rights framework for housing sets out economic and social rights that are ambitious and can be progressively realised with the right resources. But we hope that the future debate over housing and human rights will encourage discussion over what this level is as well as what our aspiration for progressive realisation should be.

We have set out our vision for housing in Scotland against the seven aspects defined by the UN as fundamental to providing adequate housing.

Security of Tenure: Irrespective of tenure type, everyone should have the necessary level of security of tenure that protects them against arbitrary eviction and harassment. The social sector lies at

16 https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

17 <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

the very centre of this so that all our citizens have a genuine choice of housing that meets their needs. But there are also measures we can take to ensure homeowners and private tenants enjoy similar protections. These could include:

- The state purchasing the home of someone at risk of default and renting it back to them;
- Strengthening the rights of private renters and their ability to enforce these rights, and ensuring private landlords have access to support for tenants who may be facing eviction.

Case study: Vienna¹

62 percent of Vienna's citizens currently live in social housing and the average monthly rent paid by those living in government-subsidized housing is \$470 for city council tenants and \$600 for housing association tenants. On average, tenants in Vienna spend 27 percent of their income on rent.

Eight out of ten flats built in the city today are financed by Vienna's housing subsidy scheme.

1 <https://www.theguardian.com/society/2017/dec/12/vienna-housing-policy-uk-rent-controls>

Affordability: If we are to realise housing as a human right then everyone must have housing that meets their needs. But what if our needs change? Having a family, relationship breakdown and job insecurity are commonplace. Do we need a human rights framework that enables us to find an appropriate home relative to our income?

There are some initial measures that could be taken to support this including:

- An uprating of Local Housing Allowance (LHA) so it covers housing costs in the PRS;
- Income maximisation so that all households receive the benefits they are entitled to; and
- An increase in the supply of homes, of all tenures, offering choice and flexibility.

However, beyond these policy levers we need a more thoughtful consideration of what affordability means.

This term ‘affordable housing’ is defined broadly in Scottish Planning Policy as housing of a reasonable quality that is affordable to people on modest incomes and may be provided in the form of social rented accommodation, mid-market rented accommodation, shared ownership housing, shared equity housing, housing sold at a discount (including plots for self-build), and low cost housing without subsidy.

When we discuss affordability, we need to consider what it means and how it can be progressively realised.

For example, do we now need a regional definition of affordability, linked to local incomes so that people are no longer priced out of the market and have a genuine choice of home? What steps are needed to create more consistent land values and so manage house price inflation in high pressure areas? We need to challenge some of our existing assumptions and build significantly more homes of all tenures if we want to increase genuine affordability.

Habitability: Whilst strict building standards apply to all new build housing, there is no agreed common standard for existing housing which can be an obstacle to organising repairs and maintenance work in mixed tenure buildings. Fundamentally, however, there is no compelling case for divergence on what is an acceptable standard of housing e.g. occupiers in the PRS are no less deserving of a safe, warm home than their counterparts in the social sector.

Our inability to place repair and improvement requirements on the owner-occupiers of older properties also runs the risk of condemning much of our historic housing stock and built heritage which, if it had to be replaced, would come at a much higher cost.

At a time when the Scottish Government is intending to establish a higher quality standard

for temporary accommodation¹⁸, we are already on a path towards the progressive improvement of housing conditions. Indeed, a human rights approach may not necessarily mean the development of new standards, but elements of existing standards could be applied where they are currently not in place. For example, taking existing elements of social housing standards and applying them to the PRS or existing homes in the owner-occupied sector.

Accessibility: We need to ensure that all our homes support our fellow citizens to live safely and happily at all ages and stages of life. However, this is not the case for many existing homes that require significant adaptation so that families can stay together, and people can remain in their own community.

In addition, we need to consider if we need to further enhance building standards and building specification for future homes. As with habitability, we need to work towards a comprehensive standard across all tenures so that tenants and homeowners can live independently in their own homes.

As we get older, our lives change and, in turn, our housing needs change. All homes must be adaptable to meet the changing needs of their residents.

Location: A home should support access to jobs, health services, schools and other social facilities. While housing can act as a catalyst for investment over time, research shows us the benefits to the economy from building homes in the right place. When they are located near large numbers of jobs, it enhances productivity and supports economic growth.

But GDP is not enough. Our homes must be in places people want to live, with the necessary infrastructure in place to support them as well as their wider ecological, social and economic needs.

Through their spatial plans, planning authorities can play a more thoughtful role in guiding the

¹⁸ <https://www.gov.scot/publications/consultation-improving-temporary-accommodation-standards/pages/2/>

location of new housing development to avoid unnecessary distances between homes and jobs, to encourage sustainable transport, to improve public health and facilitate social interaction through creating community spaces

Cultural adequacy: We want housing to reflect the diversity of Scotland, be culturally connected to the community of place and/or the community of people, creating inclusive spaces where everyone can access and use a range of facilities.

Cultural adequacy is about more than providing a home itself, it supports new models of housing be these sites for gypsy/ travellers, dual sinks in the homes of families that require it for religious observance or large homes for those that live with multiple generations under one roof.

By understanding our local cultures, planning authorities can create the homes, civic spaces and sense of community.

THE IMPACT

Without prejudging the detail of any human rights framework, it is worth considering what the impact might be if it was incorporated into domestic legislation. Here we have an imagined scenario where someone has benefitted from a human rights approach.

Victim of Domestic Abuse

A woman was living with two children and a partner in social housing. She was verbally abused by her husband and her movements were restricted, she had no friends or social life. After a report from a housing officer who was concerned about her behaviour on a recent home visit she then formally presented to the local authority as a victim of domestic abuse. Given that her partner had breached the tenancy agreement, she was asked if she would like to stay in her own home or be moved elsewhere.

Given the links to her children's school she chose to stay in her own home. As such the local authority provided temporary accommodation for her and her children. While they proceeded to review her case, she was provided with a support worker.

The local authority approached the husband and explained the case and the ground for investigation. Following the approach, it was explained to him that he would be evicted for breaching his tenancy agreement on the grounds of domestic abuse but that he would also be simultaneously offered alternative accommodation an appropriate distance from the family home.

The husband acquiesced to the order and moved out and was supported with a new tenancy elsewhere in the authority. The tenancy of the family home was transferred fully to the victim who was able to return home. The victim received ongoing assistance from a support worker for her and her children and she has now started a part time job, helping build her confidence.

CONCLUSION

If we are to achieve the overarching desires outlined above, we must work to create a supportive and cohesive housing system. Policy and investment must enhance consistency in human experience across different housing tenures. With human rights an absolute, our commitment to achieving the highest standards of housing should be equally emphatic.

No one tenure should dominate discussions as improvements in availability, affordability and accessibility are needed across all sectors, but many housing problems can be linked to the shortage of affordable homes.

As the Scottish Government develops its vision for housing to 2040 in the context of the incorporation of human rights in domestic legislation, there must also be a clear implementation plan, and resources to achieve it and deliver the homes and services our communities need. Only then will the human right to housing be achieved.

This paper is our initial contribution to the debate on housing as a human right. We recognise the path to incorporation will be challenging but so long as the process endeavours to reflect the views and needs of people and how they want to live – and the vision and insights of housing providers – then we believe we can achieve the progressive realisation of housing as a human right in Scotland.

APPENDIX

Online Survey

1. Should everyone in Scotland have a legal right to a safe, affordable, accessible home?
2. As a tenant or homeowner, are you aware of your housing rights?
3. As a tenant or homeowner, what do you think is reasonable to expect from your home?
4. International law provides a right to adequate housing which must meet a minimum level and? should direct national laws and policies towards this right. For each of the elements below, how would you define the minimum standard that tenants and homeowner should receive?
 - Legal security of tenure
 - Availability of services
 - Affordable housing
 - Habitable housing
 - Accessible housing
 - Location
 - Cultural adequacy

Focus Group Questions

1. What do you as a tenant or homeowner expect from your home?
Identify up to 10 words/short phrases you think best answer the question
2. If there is a right to housing then there must be a “minimum core” that can direct laws and policies. Thinking about the seven elements of the United Nations right to adequate housing in its General Comment 4, 1991. How would you define these?

These elements are:

1. Legal security of tenure
 2. Availability of services
 3. Affordable housing
 4. Habitable housing
 5. Accessible housing
 6. Location
 7. Cultural adequacy
3. What else should housing organisations and other public sector bodies do to make sure everyone can sustain living in their own home?

