

# The right to adequate housing in Wales: the evidence base

An independent research report by Alma Economics

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Commissioned by Tai Pawb, the Chartered Institute  
of Housing Cymru and Shelter Cymru

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## About the authors



Alma Economics combines unparalleled analytical expertise with the ability to communicate complex ideas clearly.

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The report was researched and produced by Alma Economics. The research team would like to gratefully acknowledge input on case studies from discussions with Maria Aldanas (European Federation of National Organisations Working with the Homeless), Professor Isobel Anderson (University of Stirling), Juha Kaakinen (CEO of the Y-Foundation, Finland), Dr Padraig Kenna (National University of Ireland Galway), Kerri Kruse and Vee Blackwood (New Zealand Human Rights Commission).



Tai Pawb works to advance equality and social justice in housing in Wales. We imagine a Wales where everyone has the right to a good home.

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## The right to adequate housing

The right to adequate housing is a fundamental human right derived from the right to an adequate standard of living, as defined in the International Covenant on Economic, Social and Cultural Rights<sup>1</sup> – “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.”

This fundamental human right is incorporated in legislation in countries such as South Africa and Canada and in the constitutions of other countries such as Finland. More recently, Scotland has been taking steps toward introducing this right in national legislation to ensure its progressive realisation and enforcement. In November 2021, the Co-operation Agreement between the Welsh Government and Plaid Cymru committed the Welsh Government to publishing a White Paper on proposals for introducing a right to adequate housing in Wales.<sup>2</sup>

This commitment from the Welsh Government follows three years after the Back the Bill campaign was established to advocate for the introduction of the right to adequate housing in Wales.<sup>3</sup> This programme of work firstly included a feasibility report by Dr Simon Hoffman (Swansea University)<sup>4</sup> and then the drafting of a proposed Bill.<sup>5</sup> The Draft Bill has been signed by over 90 stakeholder partners in Wales, including the CEOs of Housing Associations, the Future Generations Commissioner, and the housing spokespeople for the Welsh Conservatives, Plaid Cymru and the leader of the Welsh Liberal Democrats.

Introducing the right to adequate housing into Welsh law will help toward addressing housing issues, including homelessness, security and affordability. A 2020 poll by the Chartered Institute of Housing (CIH) Cymru<sup>6</sup> of around 1,000 individuals in Wales found that 77% of people were in favour of the introduction of a legal right to housing and 83% supported that the government should be responsible for ensuring everyone has access to a decent home (Awan-Scully, 2020).

## Housing and housing inequality in Wales

Based on research by Shelter Cymru, one in three people in Wales lives in unsafe or unaffordable housing.<sup>7</sup> The pandemic has highlighted these inequalities in the housing sector as lockdowns have led to people in Wales spending prolonged amounts of time at home. During this period, some citizens have spent time in houses of good quality with plenty of living space, others have lived in overcrowded, poor-quality housing conditions, while other individuals have experienced homelessness.

Based on a survey by Shelter Cymru (2020), during lockdown 32% of households lived in houses with

<sup>1</sup> International Covenant on Economic, Social and Cultural Rights. Article 11. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>2</sup> The Co-operation Agreement, Welsh Government, 2021. Available at: <https://gov.wales/sites/default/files/publications/2021-11/cooperation-agreement-2021.pdf>

<sup>3</sup> The Back the Bill campaign is led jointly by Tai Pawb, the Chartered Institute of Housing Cymru and Shelter Cymru.

<sup>4</sup> The right to adequate housing in Wales: Feasibility Report, Dr Simon Hoffman, 2019. Available at: <https://www.taipawb.org/wp-content/uploads/2019/06/RightToHousing-Full-ENG.pdf>

<sup>5</sup> Available in English here: <https://www.taipawb.org/wp-content/uploads/2020/09/Back-the-bill-right-to-adequate-housing.pdf> and in Welsh here: <https://www.taipawb.org/wp-content/uploads/2020/10/Draft-Bill-Cymraeg-.pdf>

<sup>6</sup> The Chartered Institute of Housing, 2020. “Three quarters support legal right to housing in Wales”. Available at: <https://www.cih.org/news/three-quarters-support-legal-right-to-housing-in-wales>

<sup>7</sup> ITV, 2021. “‘Shocking’ new figures demonstrate scale of housing crisis in Wales amidst calls for immediate Welsh Government action”. Available at: <https://www.itv.com/news/wales/2021-05-26/shocking-new-figures-demonstrate-scale-of-housing-crisis-in-wales-amidst-calls-for-immediate-welsh-government-action>

hazards, including damp, mould and electrical hazards, as well as leaking roofs or windows. Rising housing costs, the reduced size of the social rented sector and the growth of private renting have contributed to increasing housing inequalities (UK Collaborative Centre for Housing Evidence, 2021). In September 2021, it was estimated that there were around 130 rough sleepers in Wales, while around 7,000 were in temporary accommodation.<sup>8</sup>

The pandemic highlighted the existing inequalities for some population groups in accessing adequate housing. One of those groups are Black, Asian and Minority Ethnic people who are disproportionately likely to live in overcrowded houses (Welsh Government, 2021) and have a higher risk of homelessness (Price, 2021). Refugees, migrants and asylum seekers also face housing inequalities; they face difficulties accessing adequate housing due to racism, discrimination, inequality or structural factors (Tai Pawb, 2019; Welsh Government, 2021).<sup>9</sup>

Individuals from the LGBTQ+ community also face housing inequalities, with 2019 evidence suggesting the LGBTQ+ community are four times more likely to be in homelessness compared to their peers (End Youth Homelessness Cymru, 2019).

Another population group facing housing inequality are disabled people who need to live in accessible houses that support their safety and independence in daily living. Evidence suggests that 26% of people in Wales have some form of disability and more than 10% have a mobility impairment (Equality and Human Rights Commission, 2018).

## The costs of inadequate housing

Poor housing conditions can have adverse effects on individuals' physical and mental health, increasing use of the NHS, worsening self-reported health and reducing life expectancy (see e.g. Palacios et al. (2020), Clark and Kearns (2012), Bailie et al. (2012)). In a 2019 report, Public Health Wales estimated that poor housing costs the health service in Wales £95m per year (Watson et al., 2019).

Living in inadequate or unaffordable housing is associated with poor educational outcomes for children. Households with access to affordable housing have more available income that can be used for nutrition, further helping children to perform better at school (Thomas, 2017). There is evidence that improving housing adequacy is associated with higher levels of productivity and economic activity (see e.g. Diamond, 2020 or Wiesel, 2020).

A lack of affordable and adequate housing is associated with increased contacts with the criminal justice system (PWC, 2018).

Inadequate homes tend to not be energy efficient, resulting in greater emissions of greenhouse gases and low levels of thermal comfort. Nicol et al. (2019) explored a case study example focusing on the costs and benefits of improving a Welsh dwelling with an energy efficiency score of 21. Home improvements would include loft insulation, installation of double glazing and improvement of the heating system, which would result in increasing the energy efficiency score of the building to 57. Additionally, the CO<sub>2</sub> emissions of the dwelling and the annual fuel cost would decrease by 53% and 49%, respectively.

## International examples

There are a number of examples of other countries that have some form of the right to adequate

<sup>8</sup> StatsWales, September 2021. "Homelessness accommodation provision and rough sleeping". Available at: <https://gov.wales/homelessness-accommodation-provision-and-rough-sleeping-september-2021>

<sup>9</sup> Equality and Human Rights Commission. Human Rights Tracker. "Adequate standard of living / poverty – Welsh Government assessment". Available at: <https://humanrightstracker.com/en/progress-assessment/adequate-standard-of-living-poverty-welsh-government-assessment/>

housing. However, different approaches are followed to guarantee that right.

In Finland, the right to adequate housing is part of the Finnish Constitution and there has been significant implementation of policies targeted at ensuring provision of quality housing to cover individuals' needs. In terms of the combination of policy-making ambition and outcomes achieved, Finland is currently the most advanced case study in this area.

### **Finland: a country making significant progress**

- The right to housing, alongside other economic, social and cultural (ESC) rights, is part of the Finnish Constitution.
- Economic, social and cultural rights are enacted through laws, which are assessed beforehand by the Constitutional Law Committee of Parliament before they are passed and are considered justiciable by the courts.
- Housing First is an international model that focusses on ensuring homeless people have access to housing and is based on the theory that any other issues would be addressed once housing is obtained (National Alliance to End Homelessness, 2016). This has been implemented in Finland in the form of national programmes and those programmes have been effective in reducing long-term homelessness.
- Two weakness should be noted: (i) this right is conditional on the impact on people's health, and (ii) there is a weak link between the Constitution, which defines the right to housing, and the policies that ensure the right to adequate housing.

Canada and Scotland are two examples of countries that have taken steps toward introducing the right to adequate housing in their legislation but are at a relatively early stage in doing so. Canada is a unique model that has introduced the right to adequate housing in its legislation, providing non-judicial mechanisms to ensure the right is fulfilled. The Canadian approach seems promising, but it is too early for there to be evidence of its effectiveness.

### **Canada: a focus on governance**

- The National Housing Strategy Act (NHSA) was introduced into Canadian legislation in 2019, identifying the right to adequate housing as a fundamental human right and ensuring its progressive realisation in the country.
- The legislation also created three accountability bodies to promote and protect the right to adequate housing: the National Housing Council, the Federal Housing Advocate and the Review Panel.
- Under the Act, the right to adequate housing is not justiciable, but individuals can use non-justiciable mechanisms to ensure their right. The Canadian model is unique; however, it is recent, and we could not identify evidence on its effectiveness.

Scotland has a statutorily enforceable entitlement to housing and is taking steps toward introducing an enforceable right to adequate housing in its legislation, through direct incorporation of the International Covenant on Economic, Social and Cultural Rights, including progressive realisation obligations. Homelessness rates in Scotland are lower than in Wales;<sup>10</sup> Scotland's success in terms of reducing

<sup>10</sup> Crisis, 2021. "The Homelessness Monitor: Scotland 2021". Available at: <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/scotland/the-homelessness-monitor-scotland-2021/>

homelessness depends on government investment and social housing supply. The Scottish case highlights that, to fulfil a housing related right, it is essential to combine a legally enforceable right with broad political commitment to ensure that this right is fulfilled under difficult budgetary policy.

New Zealand is considered alongside Canada and Scotland as a case study demonstrating significant progress in terms of policy-making and outcomes, whilst also being at an early stage in terms of establishing the legal right to adequate housing.

There are also examples of countries that have introduced laws aiming to ensure access to adequate housing that have not been successful for various reasons. The French DALO law, which introduced a form of enforceable, individual right to housing, was ineffective in rehousing individuals. This case highlighted the need for providing resources to ensure the implementation and effectiveness of housing-related laws. On the other hand, the Catalan Act, which defined housing discrimination and harassment, seemed promising. However, another legislative change effectively neutralised it.

South Africa is a unique example of a country that has introduced a strong form of a justiciable right to access adequate housing. Although there have been some successful court cases in South Africa, improvements in outcomes have been held back by a lack of supply of adequate housing.

#### **South Africa: a justiciable right without investment in housing supply**

- The justiciable right to access adequate housing is included in the Constitution of South Africa.
- Although there have been some successful court cases in South Africa, highlighting that legally enforceable rights are a necessary condition to ensure access to adequate housing, investment in quality housing supply is important to secure and fulfil the right in the country. This investment has not happened in South Africa, underlining the need for investment in housing supply, either by the private or public sector, for legislation to be successful.

## **Lessons learned from case studies**

Introducing a legal right to adequate housing in the legislation is a necessary condition to ensure its progressive realisation and enforceability. The evidence has also highlighted that political commitment to provide quality housing through policy-making (particularly to encourage supply) can further help towards the progressive realisation of the right to adequate housing.

International case studies provide valuable lessons for implementing the right to adequate housing in Wales, particularly relating to: (i) progressive realisation; (ii) governance, and (iii) housing supply.

### **i. Progressive realisation**

Moving to fulfilling a universal right to adequate housing is an aim that cannot be realised immediately given available resources. This is true for Wales now and was true also for all case studies at the point when those countries introduced forms of the right to adequate housing.

“Progressive realisation” is the idea that governments should make continual progress toward the full realisation of a human right, taking deliberate steps both immediately and in future.<sup>11</sup> This is the feasible path for countries introducing the right to adequate housing.

Finland leads the way in providing a roadmap for progressive realisation. Since the right to adequate housing was introduced in their constitution 21 years ago, there has been a continual but gradual

<sup>11</sup> See e.g. “Progressive Realisation and Non-regression”, <https://www.escr-net.org/resources/progressive-realisation-and-non-regression>

improvement with significant increases in housing supply and putting Finland on track to end homelessness by 2027.

## **ii. Governance**

Governance mechanisms are key to progressive realisation of the right to adequate housing and there are lessons to learn on governance from various jurisdictions:

- In Finland, economic, social and cultural rights are enacted through laws, which are assessed beforehand by the Constitutional Law Committee of Parliament before they are passed and are considered justiciable by the courts. This includes policy changes affecting the right to adequate housing.
- In Canada, alongside the introduction of the right to adequate housing, three accountability bodies were introduced to monitor, promote and protect the right. The Canadian model is unique; however, it is recent, and we could not identify evidence on its effectiveness.
- The absence of suitable governance mechanisms is key to the lower rates of progress made in France and Spain.

A structure in which new law-making does not cause reductions in the right to adequate housing is key to ensuring progressive realisation.

## **iii. Housing supply**

Increasing housing supply and improving the adequacy of the existing stock are key to progressive realisation. This is the key driver in the difference between the highly successful outcomes that Finland has achieved over time relative to countries such as South Africa, which have similar levels of legal ambition coupled with lower levels of resources to increase the stock of adequate housing, primarily due to South Africa being a less economically developed country.

To achieve these improvements in housing supply and the adequacy of the existing stock, new investment is required. This could come from the private or the public sector.

# **The opportunity for Wales**

The right to adequate housing is fundamental in the International Covenant on Economic, Social and Cultural Rights. With progressive realisation over time, introducing this right in Wales would lead to continual progress toward addressing housing inequality in Wales and ending the costs to households and public services that come from living in inadequate housing.

Whilst most of the case study countries have gone further than Wales at this point in terms of the ambition of their law-making and announced intentions for further law-making, there are weaknesses in all the case studies. This provides an opportunity for Wales to use lessons learnt to become an international exemplar in establishing and realising the right to adequate housing.

The Draft Bill proposed by the Back the Bill campaign<sup>12</sup> would create a stronger justiciable right than has been established in any of the case study countries with clear governance for driving progressive realisation, including the introduction of housing impact assessments for new law and policy-making with direct or indirect impact on housing (including budgetary allocations) and regular progress reports to be brought to the Senedd.

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<sup>12</sup> Available in English here: <https://www.taipawb.org/wp-content/uploads/2020/09/Back-the-bill-right-to-adequate-housing.pdf> and in Welsh here: <https://www.taipawb.org/wp-content/uploads/2020/10/Draft-Bill-Cymraeg-.pdf>

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