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Walking the talk

A summary of the right to adequate housing and human rights issues for landlords in Scotland

Report purpose

Human rights and the right to adequate housing are guaranteed by various legally binding international standards. However, they are now gaining particular significance because the Scottish Government has embarked on an ambitious programme to incorporate the full spectrum of civil, political, economic, social, cultural and environmental human rights into Scots Law.

As housing providers will want to think about how the right to adequate housing could affect their business and ensure they can influence the emerging Bill, this paper offers a starting point to assist housing providers to:

- Understand the united nations committee on economic, social and cultural rights (cescr) definition of adequate housing and accompanying principles and how these fit with the scottish housing context, including the housing to 2040 to agenda
- Reflect on how they might work together to influence scottish government thinking about how the right to adequate housing should be defined and progressed in scotland
- Consider their potential role in progressing adequate housing and how it might shape their engagement with tenants and other rights holders in improving services.

The right to adequate housing

According to the United Nations Committee on Economic, Social and Cultural Rights (CESCR), the right to adequate housing is comprised of seven standards. These are summarised below.

The seven dimensions of adequate housing

Security of tenure: legal protection from forced eviction, harassment by landlords and other threats to having a settled home.

Habitability: A dwelling in a decent state of repair that provides a dry, warm home and adequate living space.

Availability of services: A dwelling has the facilities that makes it habitable, such as sanitation and waste disposal facilities, washing facilities, cooking facilities, storage, heating and lighting.

Affordability: Housing costs are not so high that people struggle to pay for food, fuel and other basics.

Accessibility: Suitable housing is available to those who require it, including housing that maximises the capacity of individuals with a disability or limiting illness to live independently.

Location: Housing is situated in areas that allow access to services (e.g., education, health, shops), paid work and participation in civic society. Housing should not be in an environment that is hazardous to health.

Cultural adequacy: Housing and its allocation should allow people to live in ways that express their cultural identity and does not disrupt their cultural affiliations.

In defining these standards in operational terms, an important principle is that a State are not permitted to discriminate against any specific group in the wider population. Housing providers also have similar duties under the 1998 Human Rights Act (HRA).

Another principle is that adequate housing is inseparable for other human rights and is central to the wellbeing and dignity of every person. Without an adequate home, individuals struggle to exercise their other human rights such as a right to family life, privacy, work and health. It can be especially damaging for children, with mounting evidence that homelessness and adversity experienced in childhood can lead to housing instability, poor health and lower life chances in adulthood¹.

Two further principles that underpin adequate housing are progressive realisation and minimum core obligations. These interwoven principles require States to take concrete action to move as expeditiously and effectively as possible towards the full realisation of adequate housing whilst simultaneously ensuring every person can attain a minimum core set of rights.

The National Taskforce for Human Rights explains this – there is a necessity for sustained and collective action to progressively realise economic social, cultural and environmental human rights should not preclude a person (or group of people) from seeking legal remedy if their essential rights are repeatedly ignored and violated².

The UN have not specified minimum core obligations in respect of housing. However, Scottish legislation already places duties of housing providers to respond to needs and respect and protect the rights of individuals. Examples include legislation in respect of homelessness and evictions.

A need for a national dialogue

The aspirational and open nature of the CESCR seven elements of adequate housing and the absence of internationally defined minimum core obligations for adequate housing means that the Scottish Government has a lot of scope to decide how adequate housing should be interpreted and progressed.

Our initial impression is that there is that seven elements of the right to adequate housing are reflected in the Scottish Government's Housing to 2040. The incorporation of the right to adequate housing into law is therefore unlikely to necessitate any radical shifts in the policy aims and commitments set out in Housing to 2040. On the other hand, our review provoked numerous questions that are very likely to impact on how these commitments are progressed, the obligations (or duties) this would place on housing providers and associated resource implications.

Discussions on the interpretation and implementation of adequate housing would benefit greatly from the experience of housing providers as well as the views of tenants and the wider public. CIH Scotland therefore urge housing providers to champion the need for an ongoing national dialogue on adequate housing, how it could be interpreted from a practical and operational perspective and the practical steps that could be taken to progress it in light of available resources. Of particular importance will be how best to ensure human rights can be progressed in a way that tenants, including those from vulnerable or disadvantaged social groups, are not left behind.

Issues for the Scottish Government

To inform and shape the Human Rights Bill and subsequent secondary legislation or guidance, it is recommended that the Scottish Government:

- Consider what the impact would be of any expansion of minimum core obligations and where they are in place, ensure that they are practical standards that are easy to adjudicate
- Ensure that the new human rights bill, or supporting guidance, clarifies the obligations of housing providers, including social and private landlords, in relation to the rights guaranteed under such a Bill.

¹ Bramley, G. and Fitzpatrick, S (2018) Homelessness in the UK: who is most at risk? *Housing Studies*, 33:1, 96-116,

² National Taskforce for Human Rights (2021) [Leadership Report](#), Edinburgh: Scottish Government.

- Complement legal duties (minimum core obligations) by embedding desired human rights outcomes within the Scottish Social Housing Charter and Social Landlord Assurance Statements to guide social landlord efforts in progressing adequate housing
- Prepare guidance for social and private landlords that explains their negative obligations to not interfere with someone's human rights, their positive obligations to progress adequate housing and other human rights and offers advice on how to balance competing rights
- Prepare guidance for local authorities on engaging different social groups (especially protected equalities groups) on housing related matters and the use of this evidence to inform housing need and demand assessments and local housing strategies.

More immediately, the Scottish Government may wish to:

- Use a pro-active human rights approach to steer the drafting and communication of all new housing related laws, strategies and policies, starting with the rented strategy for Scotland
- Update the 2019 social housing allocations guidance to provide social landlords with a clear steer on how their allocations policies and practice should respect their existing human rights duties as set out in the 1998 HRA
- Provide greater clarification on funding for the development of specially designed new homes and adaptations for older and disabled people, which continues to lack policy coherency and is out of step with UN minimum core obligation requirements for people with a disability
- Consider whether the ability to convert Scottish Secure Tenancy to Short Scottish Secure Tenancy in cases when an ASBO is served or where a new tenant was accused of previous antisocial behaviour is human rights compliant or is a derogation of a person's rights
- Review whether the inclusion and use tenancy conditions in the Scottish Secure Tenancy agreement to regulate moral behaviour is compliant with international human rights³.

For housing providers

In preparing this paper, CIH has formed a clear view that adopting a human rights-sensitive approach has the potential to assist social and private landlords to improve performance and tenant satisfaction. However, it will require strong leadership to work towards zero tolerance of sub-standard services and ensure tenants and other service users views on how to improve services are fully respected.

Landlords seeking to adopt a human rights-sensitive approach will want to ensure committees, boards and staff know what such an approach involves and how this should inform their work and their interactions with tenants and other service users. The checklist below has been written to assist landlords to think about how they might move towards a human rights-sensitive approach. Further checklists the set out questions to consider in relation to each of the seven elements of the right to adequate housing are set out in the full report.

Landlords are very likely to have to exercise extra vigilance in monitoring human rights risks and outcomes once the planned human rights legislation is put in place. CIH believe that human rights budgeting may assist in the process, although nothing is certain at this early stage.

³ In particular, the Scottish Government should review the clause that permits eviction in case where "you, someone residing in your house, or anyone visiting it, has been convicted of using the house or allowing it to be used for illegal or immoral purposes or a criminal offence, punishable by imprisonment, which was committed in the house or the locality".

Checklist for human rights approach and principles

- How does your organisation demonstrate and communicate its support for human rights? Is its commitment threaded throughout its strategies, policies, and procedures?
- What steps are being taken to embed an ethos and culture of human rights and engagement with residents (tenants and other service users) as a way of working across the organisation?
- How does the organisation include human rights, including cultural factors, in its monitoring and quality assurance arrangements and reporting?
- Do staff have a good working knowledge of human rights and value the views of residents? What more could be done to upskill staff?
- Are adequate time and resources made available to build up the capacity of residents, including harder to reach groups, to influence or co-design services?
- Do all residents feel equally valued and listened to or do practical (e.g., childcare, transport etc) or perceived (e.g., prejudice) barriers to engagement persist for some groups?
- How does your organisation use the experience of residents, including 'harder to reach' groups, to review and improve your housing services?
- How does your organisation regularly communicate its efforts to uphold human rights and demonstrate the impact of these efforts to residents and other stakeholders?
- Does your organisation know which forms of engagement different groups of residents prefer and whether they want more power to influence decision making?
- What role do residents have in preparing and reviewing Annual Assurance Statements that social landlords are required to submit to the SHR?
- Are complaint procedures easily accessible and do you keep individuals informed of progress and strive to resolve disputes through dialogue?

More generally, the increased use of technology to communicate and deliver services in the wake of the COVID-19 crisis has brought benefitsⁱ. However, it has reinforced digital exclusion and increased the risks to tenants' human right to privacy. Housing providers will therefore want to explore how they can address digital poverty and whether their own procedures and those of their partners and suppliers comply with data protection regulations and the right to privacy.

ⁱHousing LIN (2021) [The TECH Pandemic Report: How has COVID-19 changed the perception of technology in specialist housing?](#)



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To discuss any matters relating to the work of CIH Scotland and how we can support your organisation please contact:

Callum Chomczuk, national director Scotland
callum.chomczuk@cih.org