



THE RIGHT TO ADEQUATE HOUSING: ARE WE FOCUSING ON WHAT MATTERS?

A DISCUSSION PAPER COMMISSIONED BY THE ASSOCIATION OF LOCAL AUTHORITY CHIEF HOUSING OFFICERS

EXECUTIVE SUMMARY

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“The cause of human rights has entered a new era. For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms—the Universal Declaration of Human Rights, the international covenants, and much else. Such works needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation”.

(Kofi Annan, 2005 Address to United Nations Commission on Human Rights)



About the project

- 1 The Scottish Government intends to introduce a new Human Rights Bill in the current parliamentary session. In addition to civil and political human rights, which are the focus of the Human Rights Act 1998, it will encompass the promotion, protection and fulfilment of economic, social and cultural rights, plus the right to a healthy environment. The Bill will therefore embed in Scots law the right to adequate housing and other components of the right to an adequate standard of living.
- 2 Scottish Government ambitions to advance human rights and reduce inequalities are referenced in *Housing to 2040*. However, there has so far been little discussion on how the international concept of the right to adequate housing might be translated into housing policy and practice in a Scottish setting. One possible starting point for such a discussion is to consider what housing outcomes are of most significance for Scotland from a human rights perspective. With this in mind, ALACHO commissioned this 'can opener' paper to kick start this discussion and to explore:
 - What outcome indicators might help to define adequate housing and place people's housing rights at the centre of Scottish housing policy and delivery?
 - What do the housing outcome indicators that can be quantified, however imperfectly, tell us about the possible numbers of households that fall short of fully realising their right to adequate housing?
 - What data improvements would support better informed policy decisions in respect of the right to adequate housing and monitoring progress towards its full realisation?

The right to adequate housing

- 3 According to the United Nations Committee on Economic, Social and Cultural Rights (CESCR), a person's right to adequate housing is the right to live in security, peace and dignity. In addition, adequate housing should contain seven interwoven features. These are security of tenure, habitability, availability of services, affordability, accessibility, cultural adequacy and location.
- 4 In figuring out how each of these seven very general conditions can be understood and defined in Scotland, it is important to appreciate that economic, social and cultural human rights are framed in terms of 'progressive realisation' and 'minimum core obligations':
 - Progressive realisation requires that housing strategies move as swiftly and efficiently as resources permit to realise adequate housing for all. National and local housing strategies should therefore have clear outcomes, adequate resources and sufficient evidence to be able to demonstrate continual progress towards the full realisation of adequate housing for the population as a whole, as well as for different social groups, especially the most disadvantaged and marginalised.
 - Minimum core obligations are a sub-set of the right to adequate housing. They refer to elements that national and local governments are expected to realise immediately rather than progressively, such as addressing homelessness. The Scottish National Taskforce for Human Rights Leadership (the Taskforce) has recommended that the Bill should make these obligations justiciable and non-derogable. This means they must be open to legal challenge and, if upheld, require an appropriate and prompt response by national and/or local government, as well as other relevant organisations.
- 5 The focus of this paper is primarily on housing outcomes and possible indicators associated with the progressive realisation of adequate housing.
- 6 That said, aspects of housing policy that are already subject to legal regulations have the potential to form the backbone of a set of minimum core obligations. These include, but are not limited to, the Tolerable Standard, the abolition of the test of priority need for those assessed as homeless, and

legal procedures around evictions and repossessions. Nonetheless, the recommendations of the Taskforce suggest that the Scottish Government may have to initiate a participatory process involving housing organisations and the wider public to define a core minimum set of obligations for adequate housing.

- 7 The Scottish Government has said it plans to align *Housing to 2040* with the cross-cutting human rights agenda. As part of this process, it may have to think carefully about how to:
- Promote meaningful engagement with individuals and communities to define their own needs, requirements and solutions, rather than rely on top down and data driven housing need assessments that have increasingly become narrowly focused on estimating the potential projected shortfall on affordable housing.
 - Place as much emphasis on promoting the dignity and agency of individuals and enabling them to choose the homes and localities they value as it does on the role of housing in supporting environmental outcomes, economic growth and health outcomes.
 - Ensure enough is being done to ensure housing markets are serving the housing needs and requirements of individuals and families rather than investment goals and priorities.
 - Monitor and report on progress in delivering the housing strategy and accompanying action plans, including the role of the Scottish Parliament, the Scottish Human Rights Commission and other stakeholders in the process.
 - Ensure that the housing outcome indicators can track changes in the numbers and profile of individuals and households that fall short of fully realising their right to adequate housing, which is the issue of most immediate concern for this paper.

Possible indicators and data availability

- 8 The review of current data sources available to support the monitoring of the implementation of housing outcomes was based around 29 illustrative quantitative indicators. These were selected on the basis that they were pertinent to the Housing to 2040 agenda and:
- Provide an insight into the numbers of people whose housing rights appear not to be fully realised, as opposed to housing system trends or policy outputs, etc.
 - Reflect outcomes associated with the full realisation of adequate housing rather than focus specifically on minimum core obligations or standards.
 - Reflect, where possible, Scottish housing policy norms or emerging standards, as they tend to have defined thresholds in terms of what is considered appropriate.
- 9 Due to resource and data constraints, the illustrative indicators measure objective outcomes such as physical house conditions. We would have preferred to include 'subjective' outcome indicators that reported people's own perceptions of their housing situation. However, data to support such indicators are scarce.

Table 1: Summary of findings for each of the potential housing outcome indicators 2019-20

| Condition | No. | Possible indicator | Indicative |
|---|-----|---|------------------------|
| Tenure security (including homeless) | 1 | Households threatened with, or experiencing, homelessness as a result of mortgage related repossessions | Not currently possible |
| | 2 | Households evicted from the social rented sector | Not currently possible |
| | 3 | Households evicted from the private rented sector | Not currently possible |
| | 4 | Households evicted from the rented or owner-occupied home unable to secure suitable alternative accommodation | Not currently possible |
| | 5 | Households in private rented sector without adequate security of tenure | Not currently possible |
| | 6 | Households that contain adults that lack tenure security within the home | Not currently possible |
| | 7 | Average number of households that sleep rough on a given night | 700 |
| | 8 | Households in emergency and/or temporary accommodation at end of financial year | 11,665 |
| | 9 | Households that are 'homeless at home' (other 'live' statutory homeless households) | 8,880 |
| | 10 | Concealed families that want or require a home of their own | 24,000 |
| | 11 | Households (benefit units) compelled to share accommodation and are exposed to potentially dangerous situations | Not currently possible |
| | 12 | Potential households unable to secure a home of their own | Dropped |
| | 13 | Households with multiple and complex needs (only if not included in other homeless indicators) | Dropped |
| | 14 | Irregular migrants and others without recourse to public funds that lack tenure security | Not currently possible |
| Housing affordability | 15 | Households required to spend more than 25% of income on housing costs | 363,000 |
| | 16 | Households with AHC residual income below appropriate minimum income standards | Not currently possible |
| | 17 | Households that experience housing cost induced poverty | Dropped |
| Habitable homes with adequate services and facilities | 18 | Households that occupy a BTS dwelling | 40,000 |
| | 19 | Households living in energy inefficient homes (EPC Band below C housing quality driver of fuel poverty) | 1,337,000 |
| | 20 | Households lacking a dry home (e.g., dampness and condensation) | Not currently possible |
| | 21 | Households that live in homes that are not free from major critical disrepair | 25,000 |
| | 22 | Households whose home fails the SHQS Healthy, Safe and Secure component | 130,000 |
| Accessible housing, (physically or socially trapped) | 23 | Households that live in overcrowded conditions (bedroom standard) | 51,000 |
| | 24 | Households with unmet need for adaptations to their home | 50,000 |
| | 25 | 'Vulnerable' households (that contain a person with a limiting health condition or disability) that do not occupy a home that meets basic accessibility standards | Not currently possible |
| | 26 | People with disability or health condition trapped in hospitals or care homes (i.e., awaiting adaptations or because of lack of housing options) | 600 |
| | 27 | Households trapped in inappropriate housing due to domestic abuse | Not currently possible |
| Cultural adequacy | 28 | Households that self-identify as Gypsy/Travellers that lack adequate and culturally relevant housing | Not currently possible |
| Location | 29 | Households that live in local area that cannot access work and key services within reasonably short distance | Not currently possible |

- 10 Likewise, the ability to report on outcomes for different social groups, including those with ‘protected’ characteristics, remains very constrained by data gaps and small sample sizes. Thus, our indicative assessment of the numbers of households that fall short of realising their right to adequate housing has largely been restricted to the population as a whole.
- 11 Table 1 summarises the 29 indicators that we explored and, where possible, estimates of current levels of failure (as at 2019-20). Overall:
- 12 of the illustrative indicators could be measured, albeit not always precisely. Several of these indicators would benefit from further refinement or data development to improve the robustness of the figures reported.
 - 14 illustrative indicators could not be quantified, such that adjustments to existing data collections or new data collection systems would be needed in order to measure them.
 - 3 of the illustrative indicators have been dropped as they either do not focus on outcomes or would result in extensive double counting.

Households that fall short of fully realising their right to adequate housing

- 12 At the request of ALACHO, the 12 measurable indicators were used to produce a small range of estimates of the numbers of households whose living conditions may fall short of adequate housing. The figures for the five indicators for ‘security of tenure’ and ‘people trapped in institutional care’ are those reported in Table 1. The remaining seven indicators were derived from SHCS 2018 microdata in order to eliminate double counting across these indicators.
- 13 The central estimate reported in Table 2 reflects Scottish Government plans to require all homes in all tenures to attain EPC Band C by 2035 or earlier. The ambitiousness of this goal can be seen by the fact that well in excess of half of all households in Scotland live in homes that fall short of this one measure. To allow for the fact that SHCS can under-estimate the energy efficiency of a dwelling, a variant based on EPC Band E-G was calculated. A variant based on a higher affordability threshold was also produced. The third variant illustrates the combined impact of both these adjustments.

Table 2: Core and variant estimates of households and people that fall short of adequate housing

| | Households | | Population | |
|---|------------|---------|------------|---------|
| | Number | Percent | Number | Percent |
| Central estimate of adequate housing (EPC Band D & below and 25% affordability ratio) | 1,832,000 | 74 | 3,771,000 | 69 |
| Variant 1: EPC Band E and below | 1,154,000 | 47 | 2,271,000 | 42 |
| Variant 2: 30% affordability ratio | 1,750,000 | 71 | 3,608,000 | 66 |
| Variant 3: EPC Band E and below and 30% affordability ratio | 1,021,000 | 41 | 2,014,000 | 37 |
| Total households /population (2018) | 2,477,000 | 100 | 5,438,000 | 100 |
| All figures rounded to the nearest 1,000 Note: Total Households based on SHCS 2018 and total population based on NRS 2018 population estimates | | | | |

- 14 The range of estimates reported in Table 2 underlines how sensitive the overall estimate is to how the variables are defined and shows that:
- The living conditions of 1,832,000 households (74%) fall short of the standards implied by the right to adequate housing.
 - Even using the more stringent indicator definitions as detailed in variant 3, around 41% of households and 37% of Scotland’s population would be at risk of falling short of adequate housing standards.

- 15 For each of the three estimates, the large majority of households falls short on just one element, typically energy efficiency. In the case of the central estimate, 1,239,000 households fall short solely due to this measure. This suggests that if Scottish Government priorities to improve energy efficiency standards in all tenures progress as planned, the numbers of households that fall short of fully realising adequate housing will decline very considerably in the decade ahead.
- 16 Given the large numbers of people living in homes currently below policy desired energy efficiency standards, a more useful measure may be to focus on those who fall short of adequate housing for two or more reasons. Setting aside the estimated 45,500 households who are homeless or lack tenure security:
- The central estimate suggests that some 547,000 households fall short of being adequately housed for two or more reasons. This equates to 22% of all households.
 - Variant 3 suggests that 218,000 households fall short of being adequately housed for two or more reasons, which equates to 9% of all households.
- 17 For the most part, the profile of households that fall short of living in adequate housing is very similar to the profile of all households in Scotland. The lack of data to triangulate and confirm Scottish Household Survey findings makes it hard to draw firm conclusions, but it appears that:
- Single person households are at greater risk of living in non-adequate housing than other households. In particular, over 40% of single adult households under the age of 65 years that are inadequately housed fail for two or more reasons.
 - The proportion of private renters that live in homes that fall short of being adequate is higher than for all other tenures, with almost half of private renters living in homes that fall short of providing adequate housing for two or more reasons.
 - Couples where both partners are in work are significantly less likely to occupy inadequate housing than households where only one person is in work or no-one is in work.
 - Those living in rural areas are at greater risk of residing in non-adequate housing.
- 18 Our central estimate suggests that problems of affordability and energy inefficiency are experienced in parallel by around 275,000 households, of which over half are owners (34%) or privately renters (25%). This is likely to have implications for the design and delivery of policy to upgrade the energy efficiency of private sector homes and warrants further investigation by the Scottish Government once improved SHS income data becomes available in December 2021.
- 19 More generally, the illustrative estimates reinforce that our current approach to measuring housing need is too narrow and pays too little attention to the wide spectrum of unacceptable housing conditions many individuals and families currently experience.
- 20 The illustrative estimates also show that whilst it is the most extreme form of failing, homelessness is by no means the most numerically substantive human rights failing in terms of adequate housing. This is an important reminder that although housing discussions on human rights have largely focused on protecting the rights of people who are homeless or people who are vulnerable, the right to adequate housing is important to everyone.

Moving forward

- 21 The shift to a human rights approach to housing provides an opportunity to think afresh about the housing outcomes we want to achieve and the roles of policy and practice in empowering people to realise their right to adequate housing in a way that is consistent with the principles of non-discrimination, participation, transparency, and accountability.

- 22 Housing strategies and policies will have to reach large numbers of households to progressively realise adequate housing. This is a salutary reminder that implementation of a human right policy framework will be a far more complex and challenging task than simply taking the first step to enact human rights legislation.
- 23 Extensive policy efforts continue to be made to eliminate homelessness in Scotland, which is an OHCHR “minimum core obligation”. However, our illustrative estimates suggest that equal policy effort may be required to assist other households that experience more severe forms of housing deprivation and to prevent homelessness occurring in the first place.
- 24 The shift to a human rights approach to housing also presents an opportunity to re-appraise which existing national housing outcome indicators remain relevant and what new or modified outcome indicators might be required. A central objective of this study was therefore to consider data related issues that hold back scrutiny and accountability in respect of ‘adequate housing’. Of greatest concern are:
- The lack of data to report on even basic headline indicators for security of tenure (including evictions, repossessions, and those facing domestic abuse) other than statutory homelessness.
 - The lack of data to monitor the extent to which people with different disabilities fall short of minimum core standards of adequate housing.
 - The lack of data to monitor which social groups are most at risk of falling short of adequate housing and the reasons for this. This includes Gypsy/Travellers.
 - The failure of administrative data to provide meaningful and regularly updated insights into the numbers of individuals that enter or continue to reside in communal settings, either indefinitely or longer than necessary, due primarily to a lack of access to suitable housing.
 - The limited availability of robust data on household incomes and housing costs, although the Scottish Government has been working hard to improve this.
 - Over reliance on household survey data, and specifically the Scottish Household Survey, in the absence of routinely collected and verified data from administrative sources.
 - The lack of data to put in place subjective indicators to track people’s perceptions of their home and their experience of the housing system to complement objective indicators.
- 25 There are several reasons why greater emphasis on subjective indicators would be warranted:
- Comparisons between objective and subjective indicators would help to validate objective indicators or indicate where further review is warranted. For instance, differences between objective and subjective overcrowding indicators might indicate that the ‘bedroom standard’ no longer aligns very well with what the wider public consider to be adequate living space.
 - They could provide evidence for issues that are technically challenging to measure objectively. This might include household perceptions about problems with dampness and condensation, indoor noise problems, external pollution, and other issues that the SHCS physical survey would struggle to measure reliably.
 - They would capture people’s views and experiences in a way that respects cultural differences. For example, surveys could take cognisance of how racism and discrimination have shaped housing experiences and outcomes and how this experience differs by ethnic identity, age, class, and so on.
- 26 Aside from having an incomplete picture of the numbers of individuals and households that fall short of realising their right to adequate housing, data limitations have held back our ability to document

how the COVID-19 pandemic has reinforced or magnified housing problems for different social groups in spite of the unprecedented steps taken by both the UK and Scottish Governments.

- 27 There are a number of options for filling these data gaps but the urgent need is first to accept that if they are not addressed, they will place a significant break on the ability to advance human rights. The Scottish Government therefore needs to show leadership and ensure more comprehensive and consistent data is routinely collected by public bodies. As a first step we suggest:
- The Scottish Government should build on the advice of the Taskforce and map out which aspects of this right to adequate housing it cannot fulfil, either in whole or in part, for the population as a whole or for specific social groups due to reserved powers.
 - Discussions on the planned new tenure-neutral Housing Standard should revisit how we define and measure serious disrepair, dry homes, and noise pollution (from indoor and outdoor sources), rather than focus solely on energy efficiency and fire safety.
 - The Scottish Government should sponsor an independent review of data collected on statutory homeless and other hidden homelessness households against the current legal definition of statutory homeless in order to explore the number and profile of households that do not currently exercise their right to apply as statutory homeless and the reasons behind this.
 - The Scottish and Local Government, and their stakeholders, should work together to explore what additional policy actions are required to protect individuals from infringements of their human rights by third parties such as estate agents, landlords, developers, and builders/tradesmen.
 - The Scottish Government and all other public bodies should take further steps to build trust and inclusion. Amongst other things, this would help to ensure people from different social groups are willing to supply the data public bodies seek to collect.
- 28 Ultimately the human rights agenda is a means to improve people's quality of life and wellbeing rather than an end in itself. An effective human rights framework needs to be coherent and to clearly state which kind of longer-term goals it wants to achieve. As the main paper has repeatedly stressed, housing outcome indicators have a role to play in this process. However, no matter how comprehensive and well specified, no set of outcome indicators can displace the need for research, reasoned debate and judgement in deciding how well policies and resources have been applied and the extent which they are contributing towards the outcomes sought over the longer-term.
- 29 In keeping with this, it is hoped that, if nothing else, this paper will spark a conversation between national and local government, and other interested parties, about what housing outcomes matter, what these outcomes imply for housing policy and budgeting, and how they can pull together and use all available resources to better measure progress towards the full realisation of adequate housing.