

A response to Scottish Government consultation on Human Rights Bill with respect to the right to adequate housing, September 2023

Signatories: Shelter Scotland, Chartered Institute of Housing Scotland, ALACHO, Homeless Network Scotland, LSA, The Salvation Army, Hillcrest Futures, Cyrenians, Aberdeen Foyer, SFHA, Scottish Refugee Council, Crisis

Context

Housing is a human right and is detailed as such under Article 11 of the International Covenant of Economic, Social and Cultural Rights. The benefits of safe, secure and affordable housing are wide-ranging and realising the right to adequate housing will support efforts to realise a whole host of other ICESCR rights.

At present however, we are in a housing emergency. For many individuals and families across Scotland, the right to adequate housing is far from reach and certain groups are at further disadvantage: disability, gender and race all intersect and can lead to worse housing outcomes.

Estimates from ALACHO outline that “some 547,000 households fall short of being adequately housed for two or more reasons, which equates to 22% of all households and 31% of households that are not adequately housed.”¹ A recent paper published by Shelter Scotland using qualitative data highlighted that currently only one of the seven elements of the right to adequate housing, location, is perceived as ‘green’; with five rated amber (security of tenure, accessibility, habitability, cultural adequacy, and availability of services, materials, facilities and infrastructure) and one, affordability, rated as red.²

Recent homelessness statistics show the pressure on the homelessness and temporary accommodation systems are getting worse – especially for children, with a record 9,595 children in temporary accommodation. Local authorities are struggling to meet their statutory obligations to uphold housing rights. Last year, there were 445 instances where people were not offered temporary accommodation when they were legally entitled to it, and 3,525 temporary accommodation placements recorded as being in breach of the Unsuitable Accommodation Order: these statutory failures are now common in a number of councils.³ Finally, the Scottish Housing Regulator recently reported that the homeless system was at ‘risk

¹ Young, G. (2021) [‘The Right To Adequate Housing: Are We Focusing On What Matters?’](#), (ALACHO and CaCHE, Newhaven Research)

² Shelter Scotland (2023) [The Right to Adequate Housing: Report by the Diffley Partnership](#)

³ Scottish Government (2023) [Homelessness in Scotland: 2022-23](#)

of systemic failure',⁴ and SOLACE⁵ and the Accounts Commission⁶ published further warnings of a broken and failing housing system.

All of this outlines the need for action to strengthen the rights framework in relation to the right to adequate housing which we support. That our housing system is failing to deliver on the human right to adequate housing is representative of a systemic failure, rather than a failure of policy intent. The Human Rights Bill provides an opportunity to address this but certain elements must be present for it to make these rights real. Crucially, the Scottish Government must invest enough to deliver on rights.

The Human Rights Bill

Current proposals on **minimum core obligations** (MCOs) set out that there should be a duty to comply with MCOs and that MCOs should be developed with a participative process.

- More detail is needed on at the Bill stage. This should include:
 - timing of when MCOs should be determined which should be within 2 years of the Bill being given royal assent
 - what a participatory process for defining MCOs looks like
 - what should be taken into consideration when defining MCOs, including the driving principle of dignity, and aligning with General Comments and Committee information on ESCR rights, specifically the right to adequate housing.
- Significant guidance and work is needed to understand what is meant by rights being 'immediately realisable', given we have routine breaching of our current housing laws in both the private and public sector. This is not because they are unachievable per se, but because resource decisions have been made at a national level, and sometimes a local level, which prioritise different policies and services to the detriment of people's realisation of housing rights.
- We cannot have a situation where MCOs are set lower than people's current housing rights, this would represent an unacceptable regression of rights. Yet until we have human rights budgeting in place and an honest discussion of resources available we would not be in a position to assess what is or is not 'immediately realisable' by duty bearers.
- A duty to comply is essential to allow rights holders to name and claim their rights, and for duty bearers to feed into prioritisation, planning and resource allocation. However a duty to comply is not sufficient. As such, it is crucial that the framework nature of this Bill delivers the other elements necessary to ensure that a duty to comply will result in real change – including elements around access to justice, and human rights budgeting

⁴ Scottish Housing Regulator (2023), [Homelessness Services in Scotland: A Thematic Review](#)

⁵ SOLACE (2023), [Housing in Scotland: Current Context and Preparing for the Future](#)

⁶ Accounts Commission (2023), [Local Government in Scotland](#)

which enable duty bearers to deliver and rights holders recourse to justice if things do go wrong.

Current proposals on **progressive realisation** set out requirements on duty bearers to 'take targeted, concrete and deliberate steps; gather and deploy maximum available resources, and ensure non-retrogression of rights.'

- It is crucial that these terms are clearly defined and therefore monitorable, particularly in the context of 'maximum available resources'. At present, it would be almost impossible to monitor whether Scotland is 'gathering and deploying maximum available resources'. Significant work is required to get to a truly human rights based budgeting process and the need for such should be clearly specified in the Bill.
- Progressive realisation should have two elements to it, again which should be clearly defined within the legislation: progressive realisation of the right itself, i.e. no regression of housing rights and gradual improvement of people's rights on paper; and people's lived experience of the right – i.e. you should be aiming to increase the amount of people with access to their housing rights (beyond the MCO which should be achieved right away), and for reduced breaches of a right.
- For this to be measured, a clear monitoring and reporting process would be required for accountability purposes including guidance on development of indicators enabling tracking of progress towards progressive realisation, including how to gather and build in lived experience of housing.⁷

Current proposals include a duty for Scottish Ministers to publish a **human rights scheme** and that this scheme should report on several aspects of activity relating to the Bill.

- The human rights scheme is a key tool for embedding a human rights approach in that it will enable monitoring and accountability.
- Report should not only be on activities undertaken and policy, but on people's experiences of rights being realised, or where progress is still required. Qualitative and quantitative data will be crucial here to understand the experience of particular groups most at risk of having their rights not realised, including women, some minoritised ethnic groups and disabled people. Where there are gaps, specific actions should be identified to target these including any required resources to be made available to enable duty bearers to deliver on their duties and therefore for rights holders rights to be realised.

⁷ For more information, see Young, G. (2021) '[The Right To Adequate Housing: Are We Focusing On What Matters?](#)' (ALACHO, Newhaven Research) and also the Lived Experience Boards for the development of the Bill.

Other elements of the Bill

- Implementation of this Bill must deliver a significant programme of rights awareness for both duty bearers and rights holders.
- To further empower rights holders to realise their rights, the Human Rights Bill should include access for all to independent advocacy and provision of funding of both advocacy and advice services relating to all the ICESCR rights. These services should be included in the Human Rights Scheme. With respect to the right to adequate housing, this would help resolve a particular gap relating to support for tenants at the First-tier Tribunal (Housing and Property Chamber) whereby tenants are currently underrepresented. The Bill address some elements of complaints handling, regulatory bodies and judicial and non-judicial remedies where rights breaches occur. To strengthen our rights framework and ensure a holistic approach, the Bill should establish a right to remedy that is effective, affordable, accessible, timely, and person-centred.
- While we acknowledge that the bill is developed and implemented within the constraints of the devolution settlement, this limits (i) the potential for people with no recourse to public funds/other restricted eligibility to be able to challenge infringements of their rights on human rights grounds and (ii) the ability of Scottish public bodies to act to meet those rights. There are a series of ways in which all public bodies can maximise the use of their powers and their contribution to preventing homelessness and destitution among this group and the Bill should commit to acting on that to improve the lives of people experiencing and at risk of the most extreme infringements of human rights in Scotland.
- Human rights budgeting is key to the success of this Bill. Incorporating the human right to adequate housing into Scots law must be matched with the resource required to make that a reality for everyone – by delivering social homes and ensuring local authorities have the resources to uphold that right. You cannot guarantee people's rights without funding the policies, institutions and systems that are required to make them a reality.