

Housing is a human right

January 2019

Until there's a home for everyone.

shelterscotland.org

Shelter
Scotland

Acknowledgements

Many thanks to the individuals and organisations who provided feedback and input to this report, including the Scottish Human Rights Commission, and Nora Uhrig.

Contact

Lisa Glass, Senior Campaigns & Policy Officer

lisa_glass@shelter.org.uk, 0344 515 2469

CONTENTS

Introduction	4
A guide to this report	4
Summary	5
Chapter 1: Why is housing so important?	7
Housing is central to wellbeing	7
Housing is a human right	7
Key points	8
Chapter 2: Background to human rights	10
What are human rights?	10
The UN Treaties	11
European obligations	14
A human rights-based approach	15
Key points	16
Chapter 3: Housing is a human right	18
Is housing a human right?	18
Housing and the International Covenant on Economic, Social and Cultural Rights	18
Housing and the European Convention on Human Rights	22
Key points	23
Chapter 4: The right to housing in Scotland	25
Do people have a right to housing in Scotland?	25
Key points	29
Conclusion	31
Appendix A: More information on human rights	32
Appendix B: Housing as a human right	34

INTRODUCTION

Everyone needs good quality housing to live and thrive in: having a home is central to every aspect of our wellbeing, from health to educational attainment to happiness. Yet there are 10,000 households in temporary accommodation; 14,000 children who were homeless last year; thousands who live in homes that are overcrowded or don't meet their needs; and many more who are forced to sleep rough, on a friend's sofa, or choose between heating or eating. For all these people, a good home is out of reach.

Housing **is** a human right, and is defined as such within the Universal Declaration of Human Rights, but there is still work to do for that right to be realised in Scotland, and to make sure that everyone has access to a safe, secure and affordable home.

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

Fifty years on, we are still fighting, and we need you to join the fight and help everyone realise their human right to an adequate standard of housing: until there's a home for everyone.

A guide to this report

This report provides an overview of housing as a human right in Scotland.

- Chapter 1 explores how important housing is to wellbeing, and therefore why it is a human right.
- Chapter 2 looks at the background to human rights including an explanation of what a human right is, where they are written and defined, and how they can be enforced. It also explains what a human rights-based approach is, using the 'panel' principles.
- Chapter 3 answers the question: 'Is housing a human right?', clarifying what different treaties and conventions say and defining what an adequate standard of housing is.
- The final chapter, chapter 4, highlights how far the right to adequate housing is achieved in Scotland and where the barriers are to progression, including three case studies where rights are being denied.

SUMMARY

- Housing **is** a human right. 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.
- There is still work to do for this right to be realised in Scotland, and to make sure that everyone has access to a safe, secure and affordable home.
- Everyone needs good quality housing to live and thrive in: a home is central to every aspect of our wellbeing, from health to educational attainment to happiness.
- Yet, whilst existing laws already include a lot of housing rights and go some way to protecting the human right to housing, there is no legal right to a safe, secure and affordable home for everyone in Scotland.
- The right to an adequate standard of housing as defined in international human rights law is not enforceable at an individual level because the International Covenant on Economic, Social and Cultural Rights and other associated conventions have not been included in our domestic law here in Scotland.
- The First Minister's Advisory Group on Human Rights Leadership has recommended a new Act of the Scottish Parliament which would include the right to adequate housing.
- Incorporation of the right to adequate housing into domestic law via a new Act of the Scottish Parliament on human rights would resolve many of the gaps in current housing legislation and would be a significant step towards Scotland putting its rights aspirations into practice.
- A new law on human rights would only be the first step, however. There are lots of rights that aren't met in practice even though they have been incorporated from human rights treaties into domestic law. People need to know their rights, and be able to enforce them, for their rights to be realised in practice.
- There is an issue around enforcement of domestic legislation on housing and a lack of accountability when these laws are not upheld.

-
- Not only are public authorities breaking domestic law in some cases but they're also failing to meet the international standard that we as a society have signed up to and agreed to be judged against.
 - By taking a human rights-based approach, we can help increase accountability for the fulfilment in practice of human rights. We can ensure that rights to housing that are already outlined in domestic legislation and international human rights law are achieved and enforced in practice, by holding public authorities and duty bearers accountable and giving a clear remedy to individuals where rights are denied.
 - Until such time that the right to adequate housing is incorporated in Scottish law, we can and should use the internationally agreed right to an adequate standard of living for everyone, as defined in the International Covenant on Economic, Social and Cultural Rights, to put political pressure on the Scottish and UK Government to take steps to achieve the right to adequate housing over time.

CHAPTER 1: WHY IS HOUSING SO IMPORTANT?

Housing is central to wellbeing

Everyone needs a home – somewhere that is safe, secure and allows its inhabitants to enjoy family life, privacy and to develop their personal identity: housing is central to every aspect of wellbeing from health to educational attainment, a sense of community and happiness.¹ A wide variety of organisations and public bodies have recognised the impact that housing has on our lives.

The Commission on Housing & Wellbeing was launched by Shelter Scotland in 2013 with the aim of examining the link between wellbeing and housing.² The Commission's work has gone a long way in helping to recognise housing as the "springboard to develop other aspects of our lives."³ The Scottish Government has recognised the powerful contribution of the Commission's work and acknowledged the central role housing plays in relation to people's lives.⁴

In 2017 Shelter and Shelter Scotland developed a Living Home Standard which asked the public what was important to them in their home, and what they believed everyone should be entitled to, before asking people if their home met this new standard. This research shows the true experiences and perceptions of housing and what makes a house a home in Scotland.⁵

Similarly, human rights law recognises that all rights are connected. If your right to adequate housing is not met, this can affect your right to physical and mental health and your children's rights to play and to education. It might also mean that your rights to family life, to participate in public life, meet others and say what you think are affected.

Housing is a human right

Adequate housing is vital to our wellbeing and survival, and a lack of it can have a significant impact on our current and future health, education and prosperity. Reflecting these facts, **the right to adequate housing has been recognised globally as a human right within the International Covenant on Economic, Social and Cultural Rights**, which is part of the International Bill of Human Rights.

¹ Commission on Housing & Wellbeing (June 2015), [A blueprint for Scotland's future](#)

² Commission on Housing & Wellbeing (June 2015), [A blueprint for Scotland's future](#)

³ Commission on Housing & Wellbeing (June 2015), [A blueprint for Scotland's future](#)

⁴ Scottish Government (February 2016), [The Scottish Government Response to the Recommendations of the Commission on Housing & Wellbeing](#)

⁵ Shelter Scotland (2018) [Living home standard](#)

However, how housing is recognised as a human right is complex and cuts across a number of different conventions, treaties, and legal systems.

Currently, for many individuals and families across Scotland, this right to housing is not realised.

Key points

- Housing **is** a human right. 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.
- There is still work to do for this right to be realised in Scotland, and to make sure that everyone has access to a safe, secure and affordable home.
- Everyone needs good quality housing to live and thrive in: home is central to every aspect of our wellbeing, from health to educational attainment to happiness.

Elaine's story

Elaine Armitage⁶ and her two children became homeless when her marriage broke up and she was unable to find affordable accommodation near her parents who provided support. They were in temporary accommodation for two years, during which she had the support of the Shelter Scotland South Lanarkshire project to make sure she knew how to get temporary and permanent housing that would meet their needs and help them to thrive as a family.

“My marriage broke up and my husband said he wanted to stay in the marital home and obviously it was no longer feasible for me to stay there with him, so I had to go down to the council to ask them for help.

“I had to get letters from my doctor, from schools, you name it, to say that I had to stay in East Kilbride for family support because my son has Asperger's and it would have been too disruptive to have to try and move him to another area, another school. Plus, I've got fibromyalgia and my mum and dad really are my main support for the kids.

“It was a two-bedroom house that I was offered but they couldn't tell me how long I would be in a two-bedroom house. I explained I had a son and a daughter and they said 'well you and your daughter could share a room' and again I had to go back and get a letter from the school and various other people to say that no, that wouldn't be beneficial for her wellbeing and it would need to be a three-bedroom property. So I had to wait another few weeks and eventually I got temporary accommodation. It was a roof over my head, but it wasn't in an area I knew. You didn't know how long you were going to be there. They couldn't say a year, six months whatever. You didn't want to start mucking about with changing schools and things. Every time the phone went you'd think 'oh have they got a house for me...is this going to be it'. I was there for two years and in the end, I was living out of boxes for those two years because I couldn't settle. It was very, very stressful and very unsettling and the whole experience...I just never felt at home.”

Eventually Elaine was offered a three-bedroom permanent home.

“It's great because the kids know where they are. We've been able to decorate their rooms, basically make it a family home for me and the kids but it's been really good to finally put down roots and just to establish myself. This is our home, and nobody can come and take it away from me. It's as permanent as permanent can be. It's just given us an opportunity to be a family and start a proper family life.”

⁶ Shelter Scotland (September 2018), [Impact Report 2017-18](#)

CHAPTER 2: BACKGROUND TO HUMAN RIGHTS

What are human rights?⁷

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life.⁸

Human rights are based on shared values like dignity, fairness, equality, respect and independence.

There are rights relating to all areas of people's lives: civil and political rights and economic, social and cultural rights. Housing, for example, is considered an economic, social and cultural right.

Human rights have been defined and agreed in various treaties, conventions and laws. They are established rights, rather than perceived or assessed needs.

They can never be taken away, although they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security.⁹ It does not matter whether you have been deemed as 'deserving', or, often, 'undeserving': human rights are for everyone.

Those with responsibility for human rights are known as duty bearers. They are often state officials or public authorities.

More about human rights

Human rights can be defined and categorised in different ways:

a) Positive and negative rights

Some rights are achieved for individuals by the action of a public authority, known as positive rights, whereas others are achieved by preventing certain actions of authorities, known as negative rights, or a combination of both. For example, the right to adequate housing covers a right to be free from forced evictions carried out by public authorities, or State agents (freedom *from* the State) as well as a right to receive assistance to access adequate housing in certain situations (freedom *through* the State).¹⁰

⁷ The Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission (SHRC) and the Scottish Parliament Information Centre (SPICe) are all valuable sources of information about human rights and much of this section has been informed by them. For example: EHRC, [What are human rights?](#), SHRC, [Human rights laws](#), and SPICe (2017), [SPICe Briefing: Human rights in Scotland](#)

⁸ EHRC, [What are human rights?](#), (accessed November 2018)

⁹ EHRC, [What are human rights?](#), (accessed November 2018)

¹⁰ Office of the High Commissioner for Human Rights, [Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet No.33](#), (accessed November 2018)

b) Absolute, limited and qualified rights

An absolute right is one that must be fully observed at all times. There are very few absolute rights, but they include the right to be free from slavery, forced labour, and torture.¹¹

Most rights, like housing, are subject to some limitations or exceptions – these are known as ‘qualified’ rights. This means a public authority can interfere with your rights if it’s to protect other people’s rights, or if it’s in the interest of the wider community. There must be a specific reason or legitimate aim to restrict someone’s right. Any limitation or restriction has to be necessary, proportionate and have the least possible impact.

There are also some human rights which are described as being ‘limited’, meaning that they may be restricted only in certain situations – for example the right to personal freedom if you’ve committed a crime.

The UN Treaties

The United Nations (UN) has defined human rights in a variety of treaties and conventions.

The International Bill of Human Rights is made up by the Universal Declaration of Human Rights (1948), the International Covenant¹² on Economic, Social and Cultural Rights (ICESCR) (1966) and the International Covenant on Civil and Political Rights (ICCPR) (1966).¹³

The Universal Declaration of Human Rights is described by the United Nations as a ‘milestone document in the history of human rights’.¹⁴ It provides a common standard of achievements for all peoples and all nations and sets out fundamental human rights to be universally protected for the first time. It contains thirty articles, including Article 25 on the right to an adequate standard of living:

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 25¹⁵

Whilst the Universal Declaration of Human Rights can be said to cover the general principles of human rights, the ICESCR and the ICCPR detail the binding

¹¹ SPICe (2017), [SPICe Briefing: Human rights in Scotland](#)

¹² A covenant can be understood as promises by government to citizens.

¹³ There are also two optional protocols.

¹⁴ United Nations, [Universal Declaration of Human Rights](#), accessed November 2018

¹⁵ United Nations, [Universal Declaration of Human Rights](#), accessed November 2018

commitments, and it is these treaties which states can sign and ratify. It is the ICESCR that contains Article 11: the right to an adequate standard of living, which includes the right to adequate housing.

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 11¹⁶

Further conventions have been written covering the rights of children, women, disabled people, and other groups for whom it is felt that further protection is required for the realisation of the Declaration rights.¹⁷ As such, some of these conventions also consider the right to an adequate standard of living, including housing, for example looking at accessible housing for disabled people.

The UK has signed and ratified seven UN treaties on human rights, including the ICESCR. Under the Scotland Act 1998, Scotland is obliged to respect the 'international obligations' set out in the UN treaties. It must also provide a contribution to the formal reporting process on these, where the United Kingdom is reviewed regularly for its compliance with most of these treaties by UN Committees of special experts. Essentially, **Scotland has agreed to be judged internationally against these standards as defined by the UN.**

Unfortunately, international treaties and conventions are not a legal force in domestic law if they have not been included in it, and there is no effective tool to enforce the international treaties. Whilst some rights, such as those included within the ICPFR, have been incorporated into domestic law, others including many of those in the ICESCR have not been.

However, taking the ICESCR as an example,¹⁸ as part of the process of signing and ratifying the treaty, the UK (and Scotland as part of the UK) has agreed that:

- the government must have regard to the ICESCR and it must 'take deliberate, concrete and targeted steps towards meeting and sustaining the realisation of the rights in the Covenant, even if resources are constrained, such as during economic crises, and prohibits retrogressive measures without full justification and strict consideration of a series of safeguards, especially for the most vulnerable and disenfranchised'.¹⁹
- the UK is required to report on this progress to the United Nations Committee on Economic, Social and Cultural Rights.

¹⁶ Office of the High Commissioner for Human Rights, [International Covenant on Economic, Social and Cultural Rights](#), accessed November 2018.

¹⁷ For example, people from ethnic minority groups (ICERD 1965), women (CEDAW 1979), children (CRC 1989), disabled people (CRPD 2006), migrant workers (2003), and the convention against torture (1984) and the convention against enforced disappearance (2006). Scotland has signed up to all of these except the convention against enforced disappearance and the convention on the protection of migrant workers.

¹⁸ This section uses the ICESCR as an example given this convention includes the right to adequate housing.

¹⁹ Office of the High Commissioner for Human Rights, Country Visits – Adequate Housing, [United Kingdom of Great Britain and Northern Ireland \(August-September 2013\)](#)

Reporting processes for the International Convention of Economic, Social and Cultural Rights

This reporting is part of a range of mechanisms designed to improve protection of human rights. It includes a system of committees that monitor the performance of states around the world regarding their fulfilment of their obligations under the various treaties.²⁰ For the ICESCR, roughly every five years, Member States of the UN submit reports to the Committee on Economic, Social and Cultural Rights outlining their progress. Scotland provides input into the UK report submitted by the UK Government.²¹ Committees consider these reports alongside evidence submitted from other organisations such as charities, National Human Rights Institutions²² and members of the general public, and the committee then draws up a list of issues which it considers need addressed. The State in question is given the opportunity to respond to this, and further evidence can be submitted by others before the Committee provides some 'concluding observations'. There is no legal sanction for non-compliance with these recommendations, but they are designed to put political pressure on the state in question.

For example, in November 2018 the UN's Special Rapporteur for extreme poverty and human rights, Professor Philip Alston, conducted a visit to the UK. Ahead of the visit, Shelter Scotland provided a report on the relationship between housing and poverty.²³ At the end of the visit, the Special Rapporteur gave an initial public statement (to be followed by a full report to the UN in Geneva in June 2019) on his perceptions of poverty in the United Kingdom, where he described child poverty rates in the country as 'a social calamity and an economic disaster, all rolled into one'. He also described the state of poverty as 'avoidable' and that it is a result of a 'political choice...to fund tax cuts for the wealthy instead'.²⁴

As such, the UN treaties have an influence on UK law but cannot, by themselves, be relied on in court. This means **even if a right is included in a UN treaty, it cannot be used by itself to fight for or enforce an individual's right.**

However, by taking part in the monitoring and reporting process and continually making reference to the International Convention on Economic, Social and Cultural Rights **we can continue to put political pressure on the Scottish and UK Government to take steps to achieve the ICESCR rights, including the right to adequate housing.**

²⁰ For more information on the Committee on Economic, Social and Cultural Rights reporting cycle, see [Office of the High Commissioner for Human Rights](#). In addition, every 4 to 5 years the United Kingdom is subject to a review by other countries of the UK's compliance with all treaties; this is known as the Universal Periodic Review. For more information, see: SHRC, [Universal Periodic Review](#), accessed November 2018

²¹ SPICe (June 2018) [Economic, social and cultural rights - some frequently asked questions](#)

²² For example, see appendix A

²³ Shelter Scotland (2018), [Written Evidence to the UN Special Rapporteur on extreme poverty and human rights](#)

²⁴ Office of the High Commissioner for Human Rights (16 November 2018), [Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights](#). The full report and government's response are expected in 2019.

European obligations

After the Second World War, the Council of Europe was founded to protect human rights and the rule of law, and to promote democracy. The Member States of the Council of Europe, of which there are now 47, drew up a treaty to secure basic rights for anyone within their borders, including their own citizens and people of other nationalities. This became known as the European Convention of Human Rights (the European Convention) and was signed in 1950. It is largely based on the civil and political rights within the United Nations' Universal Declaration of Human Rights, such as the right to life, prohibition of torture and slavery, and freedom of expression. It does not include the economic, social and cultural rights, like the right to adequate housing.

The European Convention has direct effect in the UK through the Human Rights Act (1998)²⁵ which makes it unlawful for a public authority to act in a way which is incompatible with the European Convention. Many civil and political rights, unlike rights within the ICESCR, are included within the European Convention, and for human rights included in the European Convention, there are some avenues to challenge it at an individual level and at a group level: these rights are legal rights grounded in UK and Scottish domestic law.

Enforcement of the European Convention of Human Rights through the Human Rights Act 1998

The Human Rights Act 1998 makes it unlawful for a public authority to act in a way which is incompatible with the European Convention. This was intended to 'bring rights home' and to reduce the likelihood of UK cases reaching the European Court of Human Rights by introducing a stronger internal check on the compatibility of UK legislation with the European Convention.

If a **UK law** is found to be incompatible, then a UK court can deem it as such and the UK Parliament can then reconsider the legislation – though it may decide not to. Courts also have more leeway in interpreting UK legislation in a way that is compatible with European Convention rights.

If a UK court finds a **Scottish law** to be incompatible with the European Convention on Human Rights, the repercussions are stronger: the legislation is effectively declared invalid, subject to any specific provision the Court itself may make (for example, the Court can suspend the effect of the ruling to allow the defective law to be corrected).

Enforcement beyond the UK courts

In addition to the Human Rights Act, the European Court of Human Rights applies and protects the rights and guarantees set out in the European Convention on Human Rights.

²⁵ EHRC, [The Human Rights Act](#), accessed November 2018

If a UK citizen or resident has exhausted the remedies available via the UK court system and still believes that their rights, as included within the European Convention, have not been upheld, then they can take their case to the European Court of Human Rights. If the actions of a public authority are found to violate one of the European Convention rights, then the UK has an obligation to abide by the ruling of the Court. However, there are no direct means of enforcing these obligations – enforcement is ‘largely a political process’.²⁶ For example, parliament may be persuaded to change a domestic law to abide by the Court ruling.

In addition, there is also a Charter of Fundamental Rights of the European Union, which provides an overarching framework for human rights in the EU including the rights recognised by the European Convention on Human Rights. The European Charter was drafted by the EU to bring consistency and clarity to the rights established at different times and in different ways in individual EU Member States. It became legally binding on EU Member States in 2009 and is enforced through the Court of Justice of the European Union.²⁷

A human rights-based approach

The Scottish Human Rights Commission describes a human rights-based approach as a framework for using international human rights standards to ensure that people’s human rights are put at the very centre of policies and practice.²⁸

A human rights-based approach:

- focuses on empowering individuals and groups to know and claim their rights, involving people in decision making and change, rather than viewing individuals as passive recipients of charity.
- focuses on structural causes and addressing structural injustices which prevent people from realising these rights.
- increases the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights so that people can seek remedies when their rights are violated.

²⁶ SPICe (2017), [SPICe Briefing: Human Rights in Scotland](#)

²⁷ It is worth noting that if we were to leave the European Union in the event of Brexit, we might lose the protection of the Charter of Fundamental Rights of the European Union, but we would still be a signatory to the European Convention.

²⁸ Scottish Human Rights Commission, [A human rights-based approach: an introduction](#) [accessed October 2018]

PANEL and a human rights-based approach

There are a set of five commonly used underlying principles which are important in applying a human rights-based approach in practice, known as 'PANEL'.²⁹

Participation: People should be involved in decisions that affect their rights

Accountability: There should be monitoring of how people's rights are being affected as well as remedies when things go wrong

Non-discrimination and equality: All forms of discrimination must be prohibited, prevented and eliminated, and people who face the biggest barriers to realising their rights should be prioritised

Empowerment: Everyone should understand their rights and be fully supported to take part in developing policy and practices which affect them.

Legality: Approaches should be grounded in the legal rights that are set out in domestic and international laws.

Taking a human rights-based approach is important because currently, there is an accountability gap regarding the right to adequate housing in Scotland in relation to both housing rights included in domestic law and the realisation of the human right to adequate housing as defined in the ICESCR.

Key points

- Human rights are not only important – they are universal and inalienable. They apply to everyone, cannot be taken away and can only be restricted by a public authority in certain situations, for example to protect the rights of others. Any limitation or restriction has to be lawful, necessary, proportionate, and have a legitimate aim.
- Human rights cover aspects of life which our society as a whole has agreed are important to everyone and thereby should be progressed and protected.
- Focusing on human rights is important because it moves away from assessment of need and arguments of deserving and undeserving, and instead focuses on the universal entitlement of what is considered an acceptable standard of living.
- Human rights are not all enforceable in the same way.
 1. Rights included in the International Covenant on Civil and Political Rights are also generally included in the European Convention on Human Rights. These are human rights which an individual has recourse in the law and courts to protect.

²⁹ More information on the PANEL principles is available from the [Scottish Human Rights Commission](#).

-
2. Rights included within the International Covenant on Economic, Social and Cultural Rights, including the right to adequate housing, are not included in the European Convention on Human Rights, and are generally not enforceable at an individual level unless they have been incorporated into Scottish law.
- The International Covenant on Economic, Social and Cultural Rights does however make up a common standard of life, which it has been agreed that everyone is entitled to. We can use this internationally agreed standard to lobby and put political pressure on government for improvements in domestic law.
 - Taking a human rights-based approach could help increase accountability of the fulfilment in practice of human rights. We can ensure that rights to housing that are already outlined in domestic legislation and international human rights law are achieved and enforced in practice: holding public authorities and duty bearers accountable and giving a clear remedy to individuals where rights are denied.

CHAPTER 3: HOUSING IS A HUMAN RIGHT

Is housing a human right?

How housing is recognised as a human right is complex and cuts across a number of different conventions, treaties, and legal systems.

However, reflecting the fact that adequate housing is vital to our wellbeing and survival, and that the lack of it can have a significant impact on our current and future health, education and prosperity, **the right to adequate housing has been recognised globally as a human right within the international human rights framework and the treaties which have been ratified by the UK.**

The Universal Declaration of Human Rights states that **'everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including...housing,**³⁰ and the International Covenant on Economic, Social and Cultural Rights defines this further as a binding commitment.

Housing and the International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) 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 11³¹

Furthermore, **housing must meet several conditions for this right to be considered fulfilled.** The United Nations Committee on Economic, Social and Cultural Rights' general comment outlines how the right to 'adequate' housing should be interpreted:

'In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should

³⁰ UN General Assembly (1948), [Universal Declaration of Human Rights, 217 A \(III\)](#)

³¹ Office of the High Commissioner for Human Rights, [International Covenant on Economic, Social and Cultural Rights](#), accessed November 2018 and their [Right to Adequate Housing Toolkit](#).

be seen as the right to live somewhere in security, peace and dignity.³²

For example, there must be security of tenure, housing must be affordable, it must meet a certain condition standard, and the house must be in a location with certain amenities. We strongly support this definition – a house is not a home if someone is constantly worried about security or being harassed by their neighbours, about being evicted at short notice, about dampness and mould or if they'll be able to pay their bills.

A definition of the adequate standard of housing

The UN Committee on Economic, Social and Cultural Rights' general comment 4 in 1991 lists seven factors that should be considered under the definition of 'adequate' housing, and details what this might mean in practice:

- a) Legal security of tenure
- b) Availability of services, materials, facilities and infrastructure
- c) Affordability
- d) Habitability
- e) Accessibility
- f) Location
- g) Cultural adequacy

A more detailed description of these elements making up the right to adequate housing as defined within the Committee's general comment is contained within Appendix B.

How is the right to housing as included in the ICESCR enforced?

Unfortunately, the rights identified within the International Covenant on Economic, Social and Cultural Rights are not currently included in domestic law in Scotland. Therefore, the right to adequate housing as enshrined in the ICESCR and the Committee's general comment is not protected by law in Scotland and not enforceable at an individual level.

Therefore, whilst housing **is** a human right, the issue for individuals, and for organisations like Shelter Scotland, arises when trying to enforce this right – i.e. how we translate the human right to housing into the reality of a home for everyone.

³² Office of the High Commissioner for Human Rights, [CESCR General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#)

However, as described in the previous section, the UK (and Scotland as part of the UK) has signed and ratified the ICESCR and therefore has agreed to respect and have regard to the international obligations set out within the ICESCR (and other international treaties) and take steps to meet and sustain the realisation of the rights to adequate housing. Scotland must also contribute to the monitoring and reporting regime of the Committee for Economic, Social and Cultural Rights.

How effective is the monitoring regime for the ICESCR?

In 2013, the Special Rapporteur for housing visited the United Kingdom to ‘examine the realization of the right to adequate housing in the United Kingdom in light of international human rights standards’.³³ Much of the UK’s record on housing was celebrated, noting in particular the Homelessness etc (Scotland) Act 2003 for its progression in delivering the right to housing.

However, the Special Rapporteur also described the current situation in Britain as a ‘housing crisis’. She found that ‘some policies and practices which have resulted in the progressive realization of the right to adequate housing are being eroded, and that the structural shape of the housing sector has changed to the detriment of the most vulnerable.’ She also expressed concern that some measures were contributing to ‘an increased vulnerability of those who, until a few years ago, were protected.’

The Special Rapporteur made a series of recommendations including an assessment of the impact of welfare reform, recommending that the spare-room subsidy, known as the bedroom tax, be scrapped, that grants and subsidies for social housing be extended, and that there be further regulation of the private rented sector.

In Scotland, we have seen action on many of these fronts and it is possible that the Special Rapporteur’s report has had a positive influence here. The UK Government’s response however asserted there were inaccuracies of the report and described the recommendations as having ‘very little relevance’.³⁴

Future opportunities to enforce the ICESCR – a new Act of Scottish Parliament?

In Scotland, work is ongoing to explore options to develop human rights protection. The Scottish Human Rights Commission have also commissioned work on different models for incorporating the ICESCR in Scotland.³⁵ One option would be to pass legislation laying out these rights in statute.

The First Minister’s Advisory Group on Human Rights Leadership recommended a new Act of the Scottish Parliament on human rights in their final report to the

³³ Office of the High Commissioner for Human Rights, Country Visits – Adequate Housing, [United Kingdom of Great Britain and Northern Ireland \(August-September 2013\)](#)

³⁴ UK Government (February 2014), [Response to UN Special Rapporteur report](#)

³⁵ Dr Katie Boyle for SHRC (November 2018), [Models of Incorporation and Justiciability for Economic, Social and Cultural Rights](#)

First Minister in December 2018. The Advisory Group were set up in 2018 to recommend how human rights should be progressed in Scotland, and a new Act was amongst their seven recommendations. Specifically, they recommended that a new Act should include the right to adequate housing, alongside other economic, social and political rights, and those relating to civil and political and environmental rights.³⁶

The First Minister's Advisory Group on Human Rights Leadership

At the start of 2018 the First Minister established an Advisory Group on Human Rights Leadership as part of the 2018 Programme for Government, to operate independently from the Scottish Government.³⁷ The group was tasked with developing recommendations and actions on how to protect and expand on our human rights in Scotland. The group also established a Reference Group on which Shelter Scotland were represented.

The Advisory Group presented its recommendations to the First Minister on International Human Rights Day: 10 December 2018.

The recommended Act would include a duty on the government to take steps, including as part of budgetary processes and decision-making, to use the maximum of its available resources to achieve progressively the full realisation of the economic, social and cultural rights of everyone.

The First Minister has welcomed the direction of the recommendations and agreed that a national taskforce would be established for further progress.³⁸ The Scottish Government is due to respond in full to the report in 2019.

A new Act of the Scottish Parliament on human rights could enshrine the rights included in the ICESCR, including the right to adequate housing, into domestic law. This would allow individuals and organisations advocating on their behalf recourse to the courts to enforce these rights and would enable public authorities as duty bearers to be held accountable where these rights are not upheld.

A new Act would present Scotland as world leaders in human rights and it would be a huge step in enabling all individuals to realise their human right to a safe, secure and affordable home.

However, it should be noted that though a legal grounding for rights is crucial for the realisation of adequate housing for everyone, it is not sufficient; a new Act on human rights is only the first step and not a panacea. This was also highlighted within the Advisory Group's report, which stated that, currently, 'there is

³⁶ First Minister's Advisory Group on Human Rights Leadership (December 2018), [Recommendations for a new human rights framework to improve people's lives: Report to the First Minister](#)

³⁷ [First Minister's Advisory Group on Human Rights Leadership website](#) (accessed January 2019)

³⁸ First Minister's Advisory Group on Human Rights Leadership (December 2018), [Update: announcement from the First Minister 10 December 2018](#)

inadequate practical implementation of rights and there is an everyday accountability deficit.³⁹

People need to know their rights, and be able to enforce them, for their rights to be realised in practice and there needs to be accountability for duty bearers who are responsible for protecting these rights.

Until such time that the right to adequate housing is enshrined in domestic law we can and should **use the internationally agreed right to an adequate standard of living for everyone, as defined in the International Covenant on Economic, Social and Cultural Rights, to put pressure on the UK and Scottish governments to take steps to achieve this right.**

Housing and the European Convention on Human Rights

While there are no directly enforceable rights to adequate housing within the Human Rights Act 1998, some of the rights could be interpreted to include elements of the right to housing. These rights can act as tools to secure legally enforceable rights to housing for individuals, though these only cover certain aspects of housing.

For example, the Human Rights Act 1998 guarantees **the right to respect for people's private and family life, home and correspondence** in Article 8. However, the right to respect for your home does not give you a right to housing.⁴⁰ It is a right to protect the home you already have. This means that public authorities should not stop you entering or living in your home, nor should they enter without your permission, unless they have a very good reason. This applies whether or not you own your home. Human rights case law has clarified that compliance with Article 8 requires that the court considers the proportionality of an eviction by a public authority, if the tenant challenges the proportionality and is able to persuade the court that there is a defence. This has been used by Shelter Scotland's law service to defend clients. For example, in 2018 Shelter Scotland, along with Legal Services Agency, raised urgent interdict actions to prevent housing provider Serco from changing locks on their tenants who have been refused asylum. Shelter Scotland used Article 8 to argue that the procedure to change the locks following termination of an agreement, and a further 7-day notice that locks will be changed if the occupier and their family have not voluntarily left, is not compatible with human rights law. Further, it was argued that because Serco are providing a statutory function on behalf of the Home Office to those in the asylum process, they must comply with human rights law. These cases are ongoing.

³⁹ First Minister's Advisory Group on Human Rights Leadership (December 2018), [Recommendations for a new human rights framework to improve people's lives: Report to the First Minister](#)

⁴⁰ For example, EHRC [Article 8: Respect for your private and family life](#) (accessed November 2018)

In addition, Protocol 1, Article 1 protects your right to enjoy your property peacefully and not to have it taken away by the state arbitrarily or improperly.⁴¹

Other rights may offer some protection for housing: the right to family life may be relevant if you are offered accommodation which is not suitable for your family meaning you cannot all stay together, for example because it is too small; and rights relating to equalities legislation may be applicable if you are unable to remain in your home because you are experiencing harassment from neighbours because of your sexuality or if a home does not meet your accessibility requirements.⁴²

How is the right to housing as included in the ECHR enforced?

The Human Rights Act 1998 incorporates the European Convention of Human Rights into domestic UK law. Under the Scotland Act 1998, if any Act of the Scottish Parliament is incompatible with Convention rights, it is not valid law. In addition, the Convention established the European Court of Human Rights, where people who feel their rights have been violated under the Convention can take the case to court.

However, as explained above, whilst some rights included under the European Convention of Human Rights are relevant to housing, **the right to adequate housing is not included in the European Convention of Human Rights, and therefore not incorporated into domestic UK law.**

Key points

- Housing **is** a human right: the right to an adequate standard of housing is defined in the International Covenant on Economic, Social and Cultural Rights.
- The issue for individuals, and for organisations like Shelter Scotland, arises when trying to enforce this right – i.e. how we translate the human right to housing into the reality of a home for everyone.
- The right to housing as included in the ICESCR is not enforceable at an individual level because the ICESCR is not included in domestic law, and the right to housing is not clearly laid out in the European Convention on Human Rights, though parts of the European Convention can be used to protect some aspects of the right to housing.
- We need a stronger legislative framework around human rights to make sure that everyone has access to a safe, secure and affordable home.
- The First Minister's Advisory Group on Human Rights Leadership has recommended a new Act of the Scottish Parliament which would include the right to adequate housing.
- A new Act of the Scottish Parliament on human rights could enshrine the ICESCR, including the right to adequate housing, into domestic law. This

⁴¹ For example, EHRC [Article 1 of the First Protocol: Protection of property](#) (accessed November 2018)

⁴² For example, see EHRC inquiry on [housing and disabled people: Britain's hidden crisis](#)

would empower individuals, and organisations advocating on their behalf, recourse to the courts to enforce these rights and it would enable public authorities as duty bearers to be held accountable where these rights are not upheld.

- A new law on human rights would only be the first step, however. People need to know their rights, and be able to enforce them, for their rights to be realised in practice.
- We can and should use the internationally agreed right to an adequate standard of housing for everyone to lobby for improvements in domestic law to improve the delivery of this right, and ensure that where rights to housing are already protected in legislation that this is achieved and enforced in practice.

CHAPTER 4: THE RIGHT TO HOUSING IN SCOTLAND

Do people have a right to housing in Scotland?

The human right to adequate housing is clearly set out in various treaties in international human rights law. However, domestic law also provides many rights to housing which support the same outcomes as those considered under human rights discussions.

Scotland has some of the most progressive homelessness rights in the world. The Homelessness etc. (Scotland) Act 2003⁴³ ensured that, from 2012, everyone assessed as being unintentionally homeless has a right to settled accommodation. This removed the test of whether someone has a priority need for housing. This test is still in operation across England and Wales, and it restricts many people's right to support. The '2012 commitment', as it became known, showed a move from a needs-based approach to a human rights-based approach by the Scottish Government.

In December 2017, the amendment to the Unsuitable Accommodation Order came into force which reduced further the amount of time that families are able to spend in temporary accommodation which is deemed to be 'unsuitable'. This is in line with the Committee on Economic, Social and Cultural Rights' definition of the human right to housing requiring to meet certain conditions so that it can be assessed as 'adequate'.

Ongoing reforms in the private rented sector are also expected to increase tenure security for private tenants across Scotland,⁴⁴ which Shelter Scotland has long been advocating for.⁴⁵ Furthermore, there are many pieces of legislation which protect people's rights to a certain standard of housing.

Yet, the right to adequate housing is not fully realised for many people.

We know that despite world-leading homeless legislation which helps to protect the right to adequate housing, there are gaps in current domestic legislation and many people are still denied this human right day to day:

- Some people are refused or discouraged from making a homeless application, or not provided with the temporary accommodation to which they are entitled.⁴⁶

⁴³ Scottish Government (2003), [Homelessness etc. \(Scotland\) Act 2003](#)

⁴⁴ Among these reforms are the creation of the new tenancy regime through the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) and of the letting agent register through the [Housing \(Scotland\) Act 2014](#).

⁴⁵ Shelter Scotland (2013), [The case for greater security for private tenants in Scotland](#)

⁴⁶ Shelter Scotland (July 2018), [Evidence of gatekeeping in Glasgow City Council](#)

-
- Despite years of campaigning by Shelter Scotland and others in the sector, we still have no legally enforceable minimum standards for temporary accommodation. We know that many people who are homeless are being forced to stay in sub-standard accommodation for extended periods of time, including many families, despite a statutory time period limiting the amount of time they can stay in accommodation which has been assessed as 'unsuitable'.
 - We also know that many people struggle to afford their housing costs, and recent UK-wide developments like the introduction of the new benefit cap have further restricted the right to adequate housing in terms of affordability.

Not only do some of these examples break domestic law, but they undermine the right to housing enshrined in human rights agreements. This is evidence of a failure at present to fulfil the agreed human right to housing in Scotland and a clear signal that there is more to do to ensure everyone has not only a right to a safe, secure and affordable home – but that this right can achieve this in practice.

The following three case studies highlight some areas where urgent action must be taken, and where the human right to adequate housing is very clearly being breached.

1. The availability of housing

Not everyone in Scotland has access to adequate housing in practice.

Under Scottish legislation, individuals who are believed to be homeless and eligible for assistance and who have nowhere else to stay are entitled to temporary accommodation while their homelessness is assessed. Depending on the outcome of the assessment, they may be provided with further temporary accommodation until a housing solution is found.

However, the latest Scottish Government homelessness statistics for Scotland show that there were 3,200 incidences where local authorities failed to provide homeless households with temporary accommodation in 2017/18.⁴⁷ Glasgow City Council accounted for 3,025 of these.

The practice and systems of stopping people from accessing the homeless services to which they are entitled by law is known as gatekeeping. Most commonly, this means that people are stopped from making a homeless application and/or are denied temporary accommodation to which they have a right.⁴⁸

⁴⁷ Scottish Government (2018), [Homelessness in Scotland: 2017-18](#)

⁴⁸ Shelter Scotland (July 2018), [Evidence of gatekeeping in Glasgow City Council](#)

John's⁴⁹ right to adequate housing was breached when he was forced to sleep rough.

John presented as homeless to Glasgow City Council after sofa surfing with a friend in July 2017. After being told at his initial presentation that no temporary accommodation was available, he returned every day for four days. but was told each time that no accommodation was available. He had no other option but to sleep rough.

John's experience is a clear breach of both domestic law and a denial of the human right to adequate housing to all persons irrespective of income or access to economic resources, as outlined in the International Covenant on Economic Social and Cultural Rights.

2. Housing conditions

Not everyone in Scotland has access to adequate housing in terms of housing condition.

For example, the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 is intended to protect households with children or pregnant members from poor quality temporary accommodation, and roughly defines what these conditions are. In practice, most B&Bs are considered unsuitable for families and the Unsuitable Accommodation Order effectively limits their use. Originally, the Order limited the time that families could be placed in unsuitable accommodation to a maximum of 14 days in emergency situations. However, recognising the negative impact that poor temporary accommodation has on children in particular, the Scottish Government reduced the time limit from 14 days to 7 days in late 2017. Any time in this type of accommodation is likely to have a negative impact, and so the move to limit this in legislation is to be commended.

However, despite this positive legislative commitment, in practice many families are still stuck in unsuitable accommodation past the maximum time period. Last year there were 400 placements across Scotland which have constituted a breach of the Unsuitable Accommodation Order, with 280 of these breaches occurring in Edinburgh.⁵⁰

There was a lack of accountability when Cameron and Amy⁵¹ had their legal rights to adequate housing, as detailed under the Unsuitable Accommodation Order, breached.

At the time of their homelessness, Amy was 34 weeks pregnant. They were placed in a bed and breakfast by the City of Edinburgh Council

⁴⁹ Client name changed to protect anonymity. Cited in Shelter Scotland (July 2018), [Evidence of gatekeeping in Glasgow City Council](#)

⁵⁰ Scottish Government (2018), [Homelessness in Scotland: 2017-18](#)

⁵¹ Cited in Shelter Scotland (July 2018) [Time in temporary accommodation 2018](#)

and despite assurances from the Council that it was family friendly, many other residents were openly using drugs and only one communal microwave was provided to residents to heat meals.

The couple approached Shelter Scotland after living at the B&B for three weeks and were informed that as per the Unsuitable Accommodation Order, they should not have been in the B&B for more than a week. The couple were unaware of this and Shelter Scotland advisers advocated on their behalf to the Council and were able to secure them a temporary flat. The couple were later moved to another temporary flat nearer to family and remain there while they wait for permanent accommodation.

Not only does this constitute a clear breach of domestic law, but Cameron and Amy's right to adequate housing was also contravened: the Committee on Economic, Social and Cultural Rights' General Comment states that housing should be habitable and have certain services, materials, facilities and infrastructure available for it to be considered adequate.

In both this example and the previous example of gatekeeping, there is a clear lack of enforcement and accountability: local authorities openly report breaches of the law, and yet there is little or no penalty.⁵²

3. Housing affordability

Not everyone has access to adequate housing in Scotland in terms of affordability.

For many people in Scotland today, housing is not affordable. Welfare reform, in particular, has had massive effects on people's ability to afford their housing costs, thus meaning the affordability element of the right to housing as defined by the Committee is not realised for everyone. Some aspects of this are reserved and the Scottish Government has attempted to mitigate some of the worst effects of recent welfare reforms. The introduction of the new benefit cap,⁵³ for example, limits the amount of benefits received, and anything above the defined limit is taken off the housing cost element of the benefit payment. This has left some families with as little as 50p toward the cost of their housing. The benefit cap has caused severe hardship for families, stress and anxiety over the financial strain, and has pushed many into arrears, eviction and homelessness.

Lucy⁵⁴ is a single mum with four children who is subject to the benefit cap, and as a result can no longer afford her housing.

⁵² Shelter Scotland (July 2018), [Topic briefing: Time in temporary accommodation 2018](#)

⁵³ Shelter Scotland (September 2018), [Shelter Scotland response to the Work and Pensions Committee Inquiry on the Benefit Cap](#)

⁵⁴ Client name changed to protect anonymity. Cited in Shelter Scotland (September 2018), [Shelter Scotland response to the Work and Pensions Committee Inquiry on the Benefit Cap](#)

She now only receives £3 in housing benefit per week. She has built up several debts because of this, including payday loans and £5,500 rent arrears. Her private landlord has started eviction action as a result of this and Lucy has made a homeless application.

Currently, there is no legal right for affordable housing for people in Scotland but a new Act incorporating the right to adequate housing would address this: the Committee on Economic, Social and Cultural Rights' states for the right to adequate housing to be met, it must be affordable. The definition says that housing costs should not threaten or compromise the satisfaction and attainment of non-housing basic needs, and that subsidies should be provided to ensure that those who cannot otherwise afford adequate housing are able to do so.

How can we improve the right to housing in Scotland?

A new Act of the Scottish Parliament on human rights would go some way to clarifying the right to adequate housing for everyone in Scotland. Existing domestic legislation falls short of covering the right to adequate housing for everyone, and legal rights are essential to enable the achievement of adequate housing for many people. A new Act would be a significant step towards legal protection for a safe, secure and affordable home for everyone.

However, any new law would need to learn the lessons from the past. A new Act incorporating the right to adequate housing is the crucial first step to fill many of the gaps in existing domestic legislation, but it is not a panacea. Public authorities are not always held accountable, and it can be difficult for individuals to protect and enforce their rights even when they are clearly outlined in legislation. The case studies above highlight that, although there is a certain amount of monitoring through statistical returns provided by local authorities and published by national government, we are lacking true accountability of these public authorities and a clear remedy for individuals if rights are denied.

People need to know their rights, and understand them, and there must be true recourse to justice including access to legal aid and support to challenge authorities when things go wrong. We need to ensure these rights are enforced and protected to prevent systemic breaches, as well as ensuring there is adequate funding and support for public authorities and other duty bearers to deliver these rights for citizens in practice.

Key points

- Scottish domestic law already includes a lot of housing rights and goes some way to protecting the human right to housing, though there are gaps.
- Incorporation of the right to adequate housing into domestic law via a new Act of the Scottish Parliament on human rights would resolve many of the gaps in current housing legislation and would be a significant step towards Scotland putting its rights aspirations into practice.

-
- A new law on human rights would only be the first step, however. People need to know their rights, and be able to enforce them, for their rights to be realised in practice.
 - There is already an issue around enforcement of domestic legislation on housing and a lack of accountability when these laws are not upheld.
 - There are some examples of the right to housing being denied in Scotland. Public authorities are not only breaking domestic law in these cases but they're also failing to meet the international standard that we as a society have signed up to and have agreed to be judged against.
 - These issues need to be tackled for future progression towards the realisation of the right to adequate housing for everyone.
 - We must ensure that the rights to housing that are already outlined in domestic legislation and international human rights law are achieved and enforced in practice, by holding public authorities and duty bearers accountable and giving a clear remedy to individuals where rights are denied.

CONCLUSION

Whilst we have strong rights in domestic law to housing, and housing has been defined as a human right in many international conventions which Scotland has signed up to, there is a gap between a) this technical right, b) what is protected under domestic law, and c) what happens in practice. Specifically, there is a real gap on what scrutiny and accountability there is when rights related to housing – wherever they are written – are broken.

The First Minister's Advisory Group on Human Rights Leadership recommended a new Act of the Scottish Parliament on human rights.⁵⁵ This Act would include the right to adequate housing. This recommendation has huge potential for everyone in Scotland and would be a significant and crucial step towards Scotland putting its rights aspirations into practice.

We know that good quality, affordable housing that meets the household's needs is central to wellbeing: for many it is the difference between good and bad physical health such as asthma; positive mental health or stress and anxiety; being able to pay your heating bills and buy a warm winter coat for your children or not being able to afford dinner that night. Bad housing affects educational attainment, prosperity, and can contribute to social isolation and loneliness, whilst good housing can address these issues and many more. We know the awful experiences of those forced to move between multiple temporary accommodation placements, having to abide by an arbitrary curfew in a hostel, and having nowhere to cook dinner in a B&B. And in the worst possible cases, we know the consequences of having to sleep rough, on the street.

Much of Scotland's housing legislation is already there to protect individuals from this. However, there are gaps in current domestic legislation and a new Act would fill many of these to provide a legal right to adequate housing for everyone.

Crucially, there is a real difference between what is agreed in Parliament as law, and what is experienced by someone in crisis – when they're unaware of their rights, and if they don't have someone to support them. Scotland does lots of things extremely well: we have a government which has committed to building tens of thousands of new social homes, who have mitigated many of the worst possible effects of welfare reform, who have passed world-leading legislation like the Homelessness etc (Scotland) Act (2003). This is our opportunity to take the next step towards the realisation of the human right to adequate housing. But we must learn lessons from the past, and practice on the ground: we must ensure there is real accountability when the law is broken, and that there is a step change in awareness of rights – and the ability of individuals to enforce them. The opportunity is there to ensure that there is a safe, secure, and affordable home, for everyone.

⁵⁵ For more information, see Appendix A

APPENDIX A: MORE INFORMATION ON HUMAN RIGHTS

This section outlines some important human rights bodies and groups in Scotland, and where further information can be found. They were invaluable sources of information in the writing of this report.

The Scottish Human Rights Commission

The Scottish Human Rights Commission⁵⁶ is an independent public body, accountable to the people of Scotland through the Scottish Parliament.

The Commission has a general duty to promote awareness, understanding and respect for all human rights – economic, social, cultural, civil and political – to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights.

The Commission's full duties and powers are set out in the Scottish Commission for Human Rights Act 2006.

The Commission is accredited as an 'A' status National Human Rights Institution (NHRI) within the United Nations system, which means they can report directly to the UN on human rights issues. They are the only Scottish organisation that can make direct contributions to the UN Human Rights Council.

The Commission has powers to recommend changes to law, policy and practice; promote human rights through education, training and publishing research; and to conduct inquiries into the policies and practices of Scottish public authorities.

The Equality and Human Rights Commission

The Equality and Human Rights Commission⁵⁷ is Great Britain's national equality body and has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations. The Commission's job is to help make Britain fairer. They do this by safeguarding and enforcing the laws that protect people's rights to fairness, dignity and respect.

The Equality and Human Rights Commission in Scotland is working to eliminate discrimination, reduce inequality, protect and promote human rights and to build good relations, ensuring that everyone has a fair chance to participate in society. They work closely with the Scottish Human Rights Commission.

They aim to help Scotland develop in a way that values the ideals that most of us hold dear – respect, freedom, equality, dignity and fairness.

⁵⁶ [Scottish Human Rights Commission website](#)

⁵⁷ [Equality and Human Rights Commission website](#)

These are also the core principles that underpin ‘human rights’ – the basic rights and freedoms that belong to all of us as human beings.

Scotland’s National Action Plan for Human Rights (SNAP)

Scotland’s National Action Plan for Human Rights,⁵⁸ or SNAP, was launched on International Human Rights Day 2013. It articulated a shared vision of a Scotland where everyone can live with human dignity and was developed by the National Human Rights Institutions, the Scottish Government, the wider public, private and third sectors, and by Scottish civil society. It outlined a framework for action including agreed outcomes, priorities and a process for working together from 2013-17.

As part of SNAP, and specific to housing, a pilot project took place aiming to empower people to tackle substandard housing and living conditions by using human rights. The project was called Housing Rights in Practice⁵⁹ and was delivered with support from the Scottish Human Rights Commission and in partnership with Edinburgh Tenants Federation and Participation and the Practice of Rights.

First Minister’s Advisory Group on Human Rights Leadership

The 2017-18 Programme for Government committed to establishing a short-life expert advisory group, to become known as the First Minister’s Advisory Group on Human Rights Leadership.⁶⁰

This group was launched with the purpose of making recommendations to the First Minister on how Scotland can continue to lead by example in human rights, including economic, social, cultural and environmental rights.

A reference group was also established to feed into the Advisory Group, consisting of individuals drawn from across Scottish society and mobilising, in particular, the knowledge and expertise which resides within civil society and the public, private and third sectors.

The Advisory Group published their report and seven recommendations on 10 December 2018,⁶¹ and have published the First Minister’s initial response to the recommendations.⁶² The Scottish Government are expected to respond in full to the report in 2019.

⁵⁸ [Scotland’s National Action Plan for Human Rights website](#)

⁵⁹ SHRC, [Human Rights in Practice: Housing](#) (accessed November 2018)

⁶⁰ [First Minister’s Advisory Group on Human Rights Leadership website](#)

⁶¹ First Minister’s Advisory Group on Human Rights Leadership (December 2018), [Recommendations for a new human rights framework to improve people’s lives: Report to the First Minister](#)

⁶² First Minister’s Advisory Group on Human Rights Leadership (December 2018), [Update: announcement from the First Minister 10 December 2018](#)

APPENDIX B: HOUSING AS A HUMAN RIGHT

The Committee on Economic, Social and Cultural Rights defined the elements of the right to adequate housing in their General Comment adopted in 1991, as follows:⁶³

- **Legal security of tenure:** Adequate housing must guarantee specific legal protection, such as protection against harassment, forced eviction and other possible threats.
- **Availability of services, materials, facilities and infrastructure:** Adequate housing has to provide the occupants with 'sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.'
- **Affordability:** Adequate housing must be affordable, so that the housing costs do not threaten or compromise the satisfaction and attainment of non-housing basic needs. State parties should provide housing subsidies to ensure that those who cannot otherwise afford adequate housing are able to do so and that tenants are 'protected by appropriate means against unreasonable rent levels.'
- **Habitability:** Adequate housing must have adequate space and protect its occupants from heat, cold, rain, damp, wind and other safety and health hazards.
- **Accessibility:** Adequate housing must be accessible to its occupants. This entails making necessary changes to housing depending on the occupants' physical and mental health.
- **Location:** Adequate housing must be in a location that is not polluted and allows access to health care, childcare, schools, employment options and other possible social facilities.
- **Cultural adequacy:** The construction methods, materials used and relevant policies must reasonably enable cultural identity expression. This, for example, means that the UK and Scottish Governments have a responsibility to ensure that culturally adequate accommodation is available to Travellers, including transit accommodation.⁶⁴

⁶³ CESCR General Comment No. 4: [The Right to Adequate Housing](#) (Art. 11 (1) of the Covenant)

⁶⁴ UN Human Rights Council (2013), [Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, A/HRC/25/54/Add.2.](#)

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

Please support us at shelterscotland.org

RH7439. Registered charity in England and Wales (263710) and in Scotland (SC002327)

Shelter Scotland
Scotiabank House
6 South Charlotte Street
Edinburgh EH2 4AW

shelterscotland.org