

‘The Human Right to Housing’

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Submitted on behalf of Tai Pawb, Shelter Cymru and CIH Cymru (with reference to the [Feasibility Report on Incorporation of the Right to Adequate Housing](#), prepared by Dr Simon Hoffman, Swansea University).

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What are we asking?

That Welsh Government incorporates the right to housing in Welsh law.

Why?

To help address critical issues around homelessness, rough sleeping, affordable housing, accessible housing, security of tenure and substandard accommodation.

How can we achieve it?

Through adopting a dual – direct and indirect - approach to incorporation.

Introduction

We believe that at the core of any solution to the housing crisis must be a national commitment to the fundamental principle that every one of us should have a human right, underpinned by law, to adequate housing. This includes access to suitable, affordable, secure and sustainable housing. We need a vision and a legal framework that would help us shift the paradigm of the way housing is understood – namely, away from housing as a commodity, and toward housing as central to the dignity of every person.

An important contribution to this process would, in our view, be action to incorporate into Welsh law the Right to Adequate Housing as set out in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Human rights guarantee everyone a basic level of entitlement and protection in vital areas of public services. By virtue of Article 11 this includes housing. Human rights provide a clear framework for proactive rights based policy making in the housing field, as well as placing an onus on government to protect occupiers against unjustifiable interference with their occupation of housing.

The UN Committee on Economic, Social and Cultural rights has described the right to adequate housing as a right to live in ‘peace, security and dignity’. It has recognized that adequate housing means more than the provision of shelter, and has identified several aspects of the right to be addressed by law and policy, including: legal security of tenure, availability of services, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. The UN Committee has also stated that housing policy should focus on those living in the most unfavorable conditions and facing the greatest disadvantage and discrimination in society. Guidance on appropriate standards relating to all these areas of housing policy is available from the UN Committee.

While the right to adequate housing places a number of obligations on government to address housing issues, the UN Committee has clearly stated that it does not require government to provide housing for all. Instead, housing policy should pursue ‘enabling strategies’ which help individuals and households to access suitable housing.

Incorporation

Incorporation matters because without it human rights remain little more than aspirational standards (‘dead letters’) relevant only in international law. In common with other human rights, the right to adequate housing is accompanied by a general obligation to respect, protect and fulfil the right. Incorporation into domestic law would make these objectives legal standards to govern housing law and policy decision-making in Wales. Incorporation would also help insulate the right against political whim, making it part of the legal architecture in Wales. It would establish a legal guarantee that Ministers and other public authorities would act to progress

the various aspects of the right to adequate housing in Wales – especially for the most disadvantaged in society.

Incorporation would also introduce stronger accountability for housing policy. The UK government is in breach of the right to adequate housing (according to the UN), but despite this government Ministers are virtually unaccountable either to the international community or at domestic level for their housing policy. Incorporation would mean that the Welsh Government and (depending on how incorporation is achieved) other public authorities would be subject to enhanced accountability for their decisions and actions in relation to housing. This is firstly because incorporation would bring with it an expectation of compliance, but also because embedding the right to adequate housing in Welsh law would open up opportunities for new accountability mechanisms. These might include: compliance reporting or a complaints procedure, or additional scrutiny by commissions and commissioners, and the National Assembly for Wales, as well as options for enhanced court-based review.

A commitment to incorporation would be a launch pad for the Welsh Government to look along the spectrum of accountability and determine which mechanisms, informal and/or formal, are best suited to the needs of the Welsh jurisdiction and the way law and politics is conducted in Wales.

Models of incorporation and redress

Different ways to achieve incorporation of the right to adequate housing, and the consequences for redress mechanisms, are fully discussed in our feasibility report. Judicial remedies are usually more accessible and likely to be more effective where rights are incorporated into the legal system in a way which allows individuals to rely on them directly before a court or tribunal (direct incorporation). In Wales, the UNCRC has been incorporated by giving it indirect effect, i.e. making it a non-binding consideration in policy decision-making. Research for the EHRC Wales has established this is an effective mechanism to raise the profile of rights in law and policy, but it does not provide for adequate redress when policy falls short of rights-based expectations.

The Feasibility Report considers three options for incorporation of the right to adequate housing – indirect (model A), direct (Model B) or dual indirect and direct approach. The merits and weaknesses of both are fully discussed. Model A can promote a proactive approach to the right to adequate housing in policy development (including legislation), but provide only weak redress for breach of the right. Model B introduces a strong redress mechanism for individuals or groups adversely affected by housing policy decisions, but does little to promote policy-making which avoids breaching the right to adequate housing in the first place. **Bearing in mind the strengths and weaknesses of each approach, we believe that the dual approach is the best way forward.**

Practicality

The right to housing may be fulfilled progressively, over time. This means that government is required to make progress towards the fullest possible realisation of the right through the application of maximum available resources. This is called progressive realisation. ICESCR immediately prohibits discrimination and requires the provision of at least a minimum core level of enjoyment of the right to housing, avoiding homelessness, destitution and degrading treatment via provision of shelter.

We therefore think that the introduction of the right to housing in Wales would not require an immediate provision of resources, such as increased housing supply to meet full demand. It would however mean that a rights based strategy and plan would have to be developed providing a clear route map to how this might be achieved, with measurable targets along the way. If some aspects of the right to adequate housing cannot be achieved immediately, or even at all in Wales, a rights-based approach would require the reasons for this to be fully explained (including, for example, lack of resource).

Why and how should Wales incorporate the right to adequate housing

The UN Committee on Economic Social and Cultural Rights, responsible for monitoring the right to housing internationally, commented on the 'persistent critical situation' of housing in the UK and consistently recommended incorporation of international social rights including housing.

Wales, as other devolved nations, is experiencing high levels of homelessness, an increase in rough sleeping, a shortage of affordable housing, severe lack of suitably adapted and accessible accommodation for disabled people, lack of security of tenure and issues with substandard accommodation.

UK government welfare policy, which is non-devolved, will have a direct impact on how people experience the right to adequate housing in Wales. However, housing is a devolved matter and Welsh Government has a crucial role to ensure (as far as possible) that the right to adequate housing is respected, protected and fulfilled in Wales. Welsh Government has already taken action that is consistent with the right to adequate housing, for example, through increased homelessness prevention duties, duties to provide Gypsy and Traveller accommodation and promotion of Housing First approaches to tackle homelessness. Our report demonstrates that this is not sufficient however to meet the standards required by the right to adequate housing.

The loss of rights guaranteed by the Charter of Fundamental Rights of the European Union following Brexit has given new impetus to calls for further incorporation of human rights in Wales.

Social rights are the human rights that relate most closely to the competences of the NAW and the Welsh Government, with potential to provide a guiding framework for the conduct of policy and legislation in devolved areas.

Importantly, although the National Assembly for Wales does not have competence to enter international human rights treaties (this is done at a UK level), it does have the power to observe and implement human rights, including the ICESCR and the right to adequate housing. It is an option available to Ministers to introduce legislation for enactment by the NAW for the purpose of giving effect to (observing and implementing) human rights treaties to which the UK is already a State party, to include the ICESCR or the right to adequate housing as a distinct right.

It's also important to recognise that any future legislation on the right to housing would not sit in isolation from other policy platforms. Indeed, it would serve to enhance and widen existing provisions under, for example, the Human Rights Act 1998 and legislation such as the Rights of Children and Young Persons (Wales) Measure, Equality Act 2010, Social Services and Well-being Act and the Well-being of Future Generations Act.

Internationally, there is evidence as to the impact of incorporation of social and housing rights, although it is difficult to source evidence of direct impact. This is because the extent to which the right is realised depends on numerous factors, including the resources available to government, social attitudes, historical disadvantage, political prioritisation etc.

International and Wales-based evidence quoted by this report however, concludes that incorporation is accompanied by significant benefits. These include: opportunities for strategic and structural litigation to ensure better compliance with rights, as well as increase in the status of rights and subsequent recognition of rights in policy and legislation. In Finland, where housing is a human right guaranteed in constitution, homelessness is defined and perceived as a violation of a fundamental right. This led to the development of highly successful 'housing first' model (and significant reduction in homelessness).

Impact Case Studies

To further support the principle of incorporating the right to housing into Welsh law, the commissioned report also analyses the potential positive impact that incorporating the right to adequate housing could have on some of the key housing issues of the day. Apart from greater consideration of housing at a cross-policy level, incorporation could help us tackle issues such as homelessness, increasing the security of tenure, increasing the provision of accessible housing, enabling young people to access affordable housing and ensuring tenants' voices are heard.

The interest generated in this area since the launch of the feasibility study led to a commitment from Tai Pawb, CIH Cymru, Shelter Cymru and Dr Simon Hoffman to further work in partnership with third sector organisations to explore and demonstrate the potential positive impact that the Welsh right to adequate housing would have on their beneficiary groups and related policy areas. Our work will initially explore the impact on women experiencing domestic abuse, offenders and ex-offenders and people with learning disabilities.

Our report for example, demonstrates how the right to adequate housing would have influenced the abolition of intentionality in Wales, when this was considered during the development of Housing (Wales) Act 2014. We also know that intentionality has a disproportionately serious impact on single parents, mainly **women**, many of who will be survivors of **domestic abuse**, and therefore children, leading to child homelessness and poverty, in direct contravention to children's rights. The right to adequate housing would also have a positive impact on

other policy areas related to women and domestic abuse and other forms of violence and we will continue exploring this impact going forward.

As demonstrated in the report's case study related to accessible housing for disabled people, the right to adequate housing requires policy to pay due regard and provide adequate support and housing for particularly vulnerable groups. At the most general level, incorporation would lead to the need for serious consideration and appropriate response to homelessness issues faced by **ex-offenders** leaving secure estate, in terms of their housing rights. On the other hand the impact of homelessness on **offending** and re-offending would also require some serious focus. The interaction of criminal justice and housing systems and its impact on people's housing rights would have to be considered through human rights lens.

The adoption of housing as a human right could also have significant impacts on people **with learning disabilities**, in supported living accommodation. There is a growing concern that the pressures of austerity and the increased costs of delivering care and support, is leading commissioners to look for economies of scale by creating larger units of accommodation – with increased risk of institutionalization. Wales has worked so hard over the course of devolution to deliver services for people that are person-centred and progressive, and there is a palpable fear this direction of travel is at risk. A rights-based approach to housing would provide people and their advocates a way to champion their individual rights and propose solutions that protect the progress we have made over the past twenty years.

This meeting will provide further opportunities to consider the above issues and we welcome oral contributions from other housing and third sector stakeholders that are members of the Ministerial briefing group.

Discussion points

1. Does the minister support the principle that incorporation is the best way of taking forward and underpinning through law, a national commitment to the fundamental principle that every one of us should have a human right to adequate housing?
2. If yes, how can we work with the Minister and her officials to progress the incorporation of the right to adequate housing in Wales?