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# Walking the talk

An overview of the right to adequate housing and human rights issues for landlords in Scotland

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# 1. Introduction

## 1.1 Purpose of guide

Human rights can feel like a complex maze but at its core it is a set of principles for tackling inequalities, discrimination, and powerlessness. It is adherence to these principles in decision making and service delivery rather than legal remedy that will ultimately ensure people are treated with respect, fairness and dignity, have a real say over the services they use and live in adequate housing. This paper therefore offers a starting point to assist housing providers to:

- Understand the human rights context, the UN's International Convention on Economic Social and Cultural Rights (ICESCR) definition of adequate housing and accompanying principles
- Think about how they might embed human rights and involve tenants and other rights holders in improving services and their potential role in progressing the right to adequate housing
- See how other landlords have sought to respect different dimensions of adequate housing.

The paper also considers how the Scottish Government might better support landlords to progress adequate housing and improve the lives of people that use their services. It is written principally for social landlords but private landlords and letting agents may find it beneficial.

There are many questions that remain to be discussed and answered around how 'adequate housing' is to be understood, embedded, and enforced in Scotland. In light of this, this paper encourages housing providers to:

- Consider how they could champion adequate housing and shape national conversations around how adequate housing could be interpreted and advanced in a way that would contribute to building a fairer, more inclusive and sustainable Scottish society
- Reflect on how they might use their landlord, partnership working and community anchor roles to place tenants and service users, as rights holders, closer to the centre of decision-making processes and integrate human rights principles into everyday practice.

## 1.2 Why focus on human rights?

Human rights apply to everyone, meaning that all people living in Scotland are rights holders. These rights aim to allow everyone to lead a dignified life that is free from fear, harm or want and to participate fully in society, without discrimination whatever their race, sex, religion, income or other characteristic. A person's home plays a big role in shaping their dignity, health, wellbeing and safety. Access to an adequate home therefore influences a person's ability to live in dignity, comfort and security, to earn a living, and to participate in the social and economic life of the community.

The Human Rights Act 1998 (1998 Act) has incorporated civil and political human rights into domestic legislation, but the Scottish Government has embarked on an ambitious programme to incorporate the full spectrum of civil, political, economic, social and cultural human rights into Scots Law. In March 2021, the Scottish Parliament passed the UN Convention on the Rights of the Child (Incorporation) (Scotland) Bill (UNCRC Bill). The Scottish Government also plans to introduce a Human Rights Bill based around the recommendations of the National Taskforce for Human Rights Leadership<sup>1</sup> (the Taskforce).

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<sup>1</sup> National Taskforce for Human Rights (2021) [Leadership Report](#), Edinburgh: Scottish Government

The UK Supreme Court ruled in October 2021 that four provisions of the UNCRC Bill fall outside the Scottish Parliament's competence. This will affect the final form and content of both the UNCRC Bill and the proposed human rights bill but for now it seems that the latter will:

- Incorporate the right to adequate housing, which will give people a right to inhabit a secure, habitable, and affordable home that is suitable for their circumstances
- Strengthen the obligations placed on duty holders and other bodies to tackle discrimination, especially against women, people from ethnic minority groups and people with a disability
- Require the Scottish Government and Scottish Parliament to pay close attention to the budgetary implications of policies and laws, including whether the cost burden they place on housing providers, and thus tenants' rents, are proportionate, fair and affordable
- Clarify which private and third sector organisations conduct public functions and their human rights duties. This raises the possibility that social and private landlords may be tasked with similar duties so that tenants' human rights are protected regardless of who their landlord is
- Strengthen the ability of tenants, and organisations that act on their behalf, to hold policy-makers and housing providers to account if their human rights are breached
- Require courts and tribunals to interpret eviction and other housing cases in a manner that is consistent with the full set of human rights, including the right to adequate housing.

From a housing provider perspective, the evolving human rights framework should also help to:

- Reinforce that housing is a fundamental human right and central to a person's dignity and that resolving the housing crisis is integral to the attainment of other human rights, such as those related to family life, privacy, poverty, health, education and the environment
- Guide landlords in providing housing in a just, equitable, and dignified way
- Place the provision of adequate housing and the importance on enabling people to have a real say in decisions that affect them at the centre of housing policy and service delivery
- Make a clear statement that people who access social housing or claim assistance with their housing costs are exercising their human rights and not beneficiaries of welfare or charity
- Provide housing providers with greater clarity about their human rights responsibilities and how the right to adequate housing is to be progressed in Scotland and over what time frame
- Help ensure that local authorities and other organisations responsible for fulfilling human rights are adequately resourced and have the capacity to undertake their duties
- Make it easier for social and private tenants to seek legal remedy from state bodies and housing providers when other avenues of collaboration and challenge have been exhausted
- Provide a framework for appraising how to balance competing or divergent interests and views of different individuals and communities and what actions are necessary and proportionate
- Extend the requirement for courts and tribunals to make a proportionality assessment in eviction cases for all residents of rented property, not just social rented tenants.

Delivering the legislative programme will be a major milestone but it will only be a first step. To translate it into a human rights policy framework with concrete priorities and actions to improve people's lives, the Scottish Government will require constructive and ongoing dialogue with local authorities, housing providers, other service providers and the wider public to identify lasting solutions to fulfil human rights in light of available resources. This was recognised by the Taskforce. It called for extensive engagement to develop statutory guidance, advisory guidance and additional legislation 'to give practical effect to these rights' and to put in place appropriate monitoring arrangements, all underpinned by major education and capacity-building programmes<sup>2</sup>.

Human rights standards are national in focus, but people's experience of housing is bound up with where they live. This opens the door for social landlords to play a key role in championing adequate housing and ensuring that policy makers and other public authorities understand whose housing rights are being neglected due to systemic shortcomings that persist in different local housing systems.

### 1.3 What this guide covers

This rest of this paper is structured into the following sections:

- Section 2 provides an overview of human rights, and in particular adequate housing and the core principles associated with adopting a human rights approach
- Sections 3 to 8 discuss each of the ICESCR dimensions of adequate housing and illustrate how landlords have sought to advance various dimensions. Each section concludes with a checklist of issues that housing providers, and in particular social landlords, might wish to consider
- Section 9 wraps up and considers what the Scottish Government could do to support landlords to uphold human rights and advance the right to adequate housing.

The subject of housing and human rights is a rapidly evolving and complex area that impacts on all aspects of a housing provider's business, including procurement and human resources. On the other hand, this short guide is focused principally on the right to adequate housing. It therefore does not offer an authoritative or comprehensive account of human rights and duties or act as a substitute for legal advice. Appendices to this guide, however, signpost resources that landlords may find useful in seeking to champion adequate housing and embed a human rights culture within their organisation.

CIH Scotland believe that human rights principles and the right to adequate housing would help to put people and their needs at the heart of national and local housing policy as well as assist housing providers to deliver higher quality services and ensure staff, tenants and other service users feel valued and empowered. CIH Scotland would therefore urge landlords to recognise the changing legal and political context and begin (or continue) the journey of making human rights and adequate housing central to their thinking and way of working rather than await legislation.

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<sup>2</sup>ibid.

## 2. Overview of human rights

### 2.1 International human rights and growing interest in adequate housing

Adequate housing is a core part of human rights. The Universal Declaration of Human Rights (UDHR) includes adequate housing as part of the wider right to an adequate standard of living. The right to adequate housing is also part of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which along with the Universal Declaration and the International Covenant on Civil and Political Rights (ICCPR) collectively form the International Bill of Human Rights.

The right to adequate housing is also woven through human rights treaties and agreements. Examples include conventions for protecting the rights of women, children and of disabled people.

By ratifying international human rights treaties, a State, such as the UK, agrees to respect, protect and fulfil the right to adequate housing. These obligations extend to the Scottish Government, local authorities and other state bodies. The 2018 Fairer Scotland Duty reinforces these obligations, as will the planned Human Rights legislative programme that was noted in section 1.

For now, only civil and political human rights are embedded in domestic law. However, as all rights are inter-connected, the UN Committee on Economic, Social and Cultural Rights (CESCR) and the UK Equalities and Human Rights Commission (EHRC) have said the 1998 Act should be interpreted in a way that upholds the right to adequate housing. Most rights are qualified rather than absolute, meaning they can be restricted to balance the rights of different individuals or the wider community. (See appendix 1 for details).

Adequate housing is one of the most discussed economic, social and cultural rights on the international stage. This reflects the persistence of homelessness and the failure of Governments across much of the globe to keep pace with the growing numbers of people unable to secure access to a suitable home or who are struggling to pay their housing costs.

Closer to home, the Grenfell Tower fire has also shown the tragic consequences that can arise when authorities collectively fail to uphold human rights. An EHRC investigation concluded that the authorities had neglected tenants' right to life as well as their right to adequate housing by failing to provide adequate safety measures (e.g., sprinklers and working fire alarms) and by failing to respond to repeated complaints and evidence from tenants that the cladding was unsafe<sup>3</sup>.

#### Summary of UDHR rights and freedoms

##### Civil and political

- Right to life, liberty and security of person
- Right to freedom from torture and slavery
- Right to recognition and equality before the law
- Right to freedom of thought, conscience and religion
- Right to freedom of peaceful assembly and association
- Right to property
- Right to privacy and family life

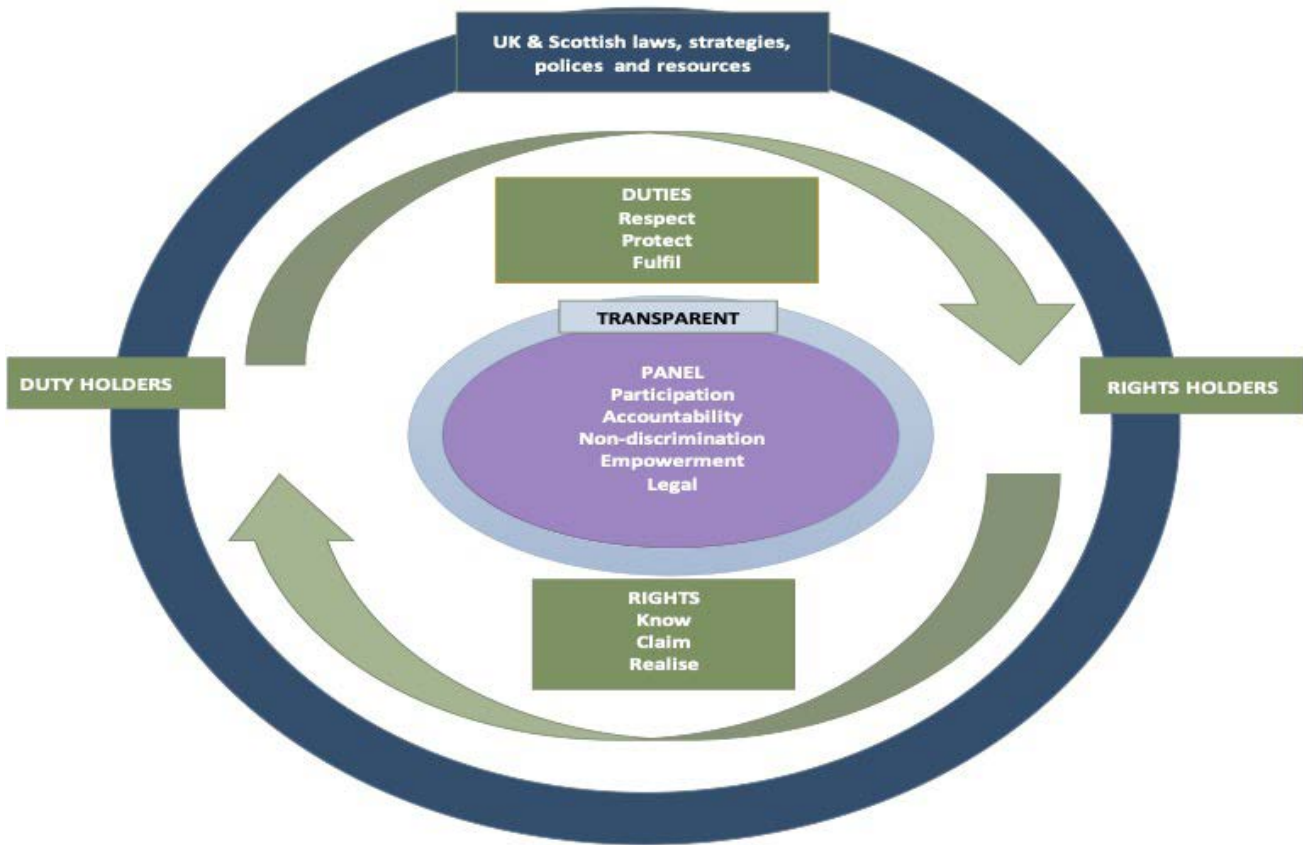
##### Economic, social and cultural

- Right to an adequate standard of living (e.g., housing, food, clothing etc)
- Right to work, fair terms, and trade union membership
- Right to rest and leisure and cultural life
- Right to education
- Rights to highest attainable standard of health
- Right to social security and social insurance

Source: UN Universal Declaration of Human Rights

<sup>3</sup>Equalities & Human Rights Commission (2018) [Following Grenfell: the right to adequate and safe housing](#), London: EHRC

Figure 2:1 Summary outline of a human rights approach



## 2.2 Responsibilities and approaches to upholding human rights

Governments have various tools to fulfil their human rights obligations, such as legislation, strategies, policies, regulation, public spending and taxation. For instance, the Scottish Government can pass laws to require any organisation, private or public, to uphold human rights. It can also use different tools to modify the behaviour of private companies and individuals. Scottish Government policy and resource decisions will therefore play a pivotal role in creating the conditions that make it possible for organisations to uphold human rights and for people to enjoy adequate housing and other social and economic rights.

### International human rights obligations

**Respect:** The Scottish Government and other state bodies have a duty to promote and not to infringe a person's human rights.

**Protect:** State bodies have a duty to prevent third parties from interfering with the rights of individuals and groups.

**Fulfil:** State bodies are obliged to take positive action to fulfil human rights. This includes 'obligations to facilitate', such as actions to strengthen people's ability to meet their housing needs through the market and 'obligations to provide' such as the provision of social housing for those who cannot access by their own means.

Local authorities have positive obligations to respect, protect and fulfil human rights and must comply with the 1998 Act in conducting their homeless, landlord and other housing and land-use activities. This includes deciding where and what kind of homes are built, encouraging community engagement in decision making and taking steps to prevent and resolve human rights abuses by third parties such as private landlords. As a result, their actions (or inaction) often have a more direct impact on residents' housing rights than those of the Scottish Government.



Registered Social Landlords (RSLs) currently have a duty to comply with the 1998 Act and ensure they deliver services in a way that is consistent with this. Thus, the Scottish Housing Regulator (SHR) requires local authority and RSL landlords to give “due regard to equality and human rights legislation in their decision-making” and “to deliver services that recognise and meet the individual needs of tenants and other service users”.<sup>4</sup>

Companies not classed as delivering a public function mainly have negative duties. The 1998 Act therefore requires private landlords to respect the rights of a tenant to live in their home without intrusion or interference. That said, Scots law gives private landlords positive obligations to respect their tenants’ rights in relation to lettings, deposit requirements, evictions and the repairing standard. The Supreme Court ruling that a tenant’s rights do not necessarily outweigh a private landlord’s right to their property in eviction cases<sup>5</sup> does not change this.

Consistent with the 1998 Act, social landlords should already be applying a human rights sensitive approach and have a clear commitment to respect civil and political human rights. They should also be regularly reviewing their services to ensure that they are not infringing the human rights of tenants and other rights holders and taking steps to tackle discrimination.

Discussions carried out to inform this paper suggest some social landlords are now looking to adopt a more progressive approach to human rights to improve outcomes for their tenants and other rights holders. This does not necessarily require a major shift in priorities. Instead, the focus is likely to be on building a deeper picture of the diversity of experience amongst tenants, improving staff’s working knowledge of human rights and how to apply them, empowering tenants by co-designing services and addressing any implicit bias in service provision.

Upholding human rights can also be good for the business of private housing providers. It can support good governance, enhance the reputation of a business and “reduce the risk of ‘sleepwalking’ into avoidable controversy”<sup>6</sup>. This has led to a rise in the numbers of businesses that have adopted the UN Guiding Principles on Business and Human Rights in the decade since they were published<sup>7</sup>. These guidelines rest on two core elements:

- A policy commitment to respect human rights that is approved by senior management and boards and covers all business operations
- Due diligence to identify, prevent and mitigate any adverse human rights impacts and to communicate and account for how a business goes about these activities.

As the Scottish Government would like to see the private sector play a bigger role in upholding human rights, the HR Bill is likely to take account of the UN guiding principles for business. Work to prepare the Bill will also most likely renew discussion around what constitutes a public function or service and the extent to which private and social tenants should have comparable ability to exercise their right to adequate housing and seek effective remedy if this right is violated (see appendix 1).

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<sup>4</sup> Scottish Housing Regulator (2019) [Regulation of Social Housing in Scotland - Our Framework](#), Glasgow: SHR

<sup>5</sup> Pascoe, S, (2017) [The end of the road for human rights in private landowners’ disputes?](#) *The Conveyancer and Property Lawyer*, 81 (4) .pp. 269-286. ISSN 0010-8200

<sup>6</sup> Freeman B., and Moynihan H. (2021) [The role of the private sector in protecting civic space](#), London: Chatham House

<sup>7</sup> Office for High Commissioner Human Rights (2011) [Guiding Principles on Business and Human Rights, Guiding Principles on Business and Human rights Implementing the United Nations “Protect, Respect and Remedy”](#), HR/PUB/11/04 Geneva: United Nations

## 2.3 The right to adequate housing

The following paragraphs outline the CESCR definition of adequate housing and key human rights principles that states are expected to follow in working towards its realisation<sup>8</sup>. It also outlines the link between the right to adequate housing and other human rights.

### UN seven standards of adequate housing

The seven dimensions a home should meet to be considered adequate are summarised below. The CESCR has defined these dimensions in broad terms to allow for the fact that the desired standards of housing and housing services invariably vary over time and from one country to another. The Scottish Government therefore has a lot of scope to work alongside housing providers and rights holders to decide how adequate housing should be interpreted and put into practice.

#### The seven dimensions of adequate housing

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

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

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

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

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

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

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

### Progressive realisation and non-retrogression

The principle of 'progressive realisation' acknowledges that adequate housing, like other economic and social rights, require time and resources to fulfil and that each state has to weigh up and balance how best to use its finite resources across a range of policy areas. In line with this, the CESCR expects every government to monitor progress and show that coherent and concrete steps are being taken to fulfil these rights as quickly and effectively to the maximum of its available resources and to provide clear and convincing reasons for any delay and factors that are impeding progress.

<sup>8</sup> CESCR (1991) [General Comment 4, The right to adequate housing](#), Geneva: United Nations and OHCHR (2012) [Right to Adequate Housing Toolkit](#), Geneva: United Nations.

## Minimum core obligations

The principle of progressive realisation is interwoven with the principle of minimum core obligations. Essentially, the CESCR expect states to take concrete action to ensure people attain a minimum core (or essential) set of rights whilst simultaneously continuing to move as expeditiously and effectively as possible towards the full realisation of all social, economic and cultural rights<sup>9</sup>. This underpins the Taskforce observation that the necessity for sustained and collective action to progressively realise human rights should not preclude a person (or group of people) from taking legal action if their essential rights are repeatedly ignored and violated<sup>10</sup>.

Again, it has been left to each state to define their own minimum obligations in respect of adequate housing, but it is anticipated housing policy and practice should respond promptly to the needs of individuals from disadvantaged and marginalised groups. Thus, the UN Special Rapporteur for housing has suggested these minimum core obligations should include<sup>11</sup>:

- A clear strategy to advise adequate housing and eliminate homelessness as swiftly as possible, backed by adequate resources plus effective and independent and transparent monitoring
- Protection against evictions that have not been legally sanctioned by a Court or Tribunal and the prevention of eviction into homelessness
- Action to address discrimination and inequalities in access to housing and the delivery of housing services by public, social or private housing organisations
- Meaningful participation by rights holders, including hard to reach groups, in the design, implementation and monitoring of strategies and actions to progress adequate housing
- Provision of a range of formal and informal mechanisms of remedy for people who feel their right to adequate housing has been violated.

The Taskforce has also called for the Scottish Government to set up a participatory process to define core minimum obligations<sup>12</sup>. At this early stage it is not known what these minimum core obligations will entail but the upcoming rented sector strategy consultation may offer a first chance to discuss them. As these obligations would provide the basis on which someone could take legal action against the government or a landlord for a breach of the right to housing, the importance of housing providers engaging in this participatory process should therefore not be under-estimated.

## Indivisible, inter-dependence and inter-relatedness

It is a well-established principle that human rights are interdependent, indivisible and interrelated.<sup>13</sup> For instance, a right to vote may be of limited importance if someone is destitute and lacks a home and food. It is these three principles that permit articles in the 1998 Act to be used to uphold the right to adequate housing.

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<sup>9</sup> CESCR (1991) General Comment No. 3: [The Nature of States Parties' Obligations](#), E/1991/23,

<sup>10</sup> National Taskforce for Human Rights (2021) [Leadership Report](#), Edinburgh: Scottish Government.

<sup>11</sup> Special Rapporteur (2019) [Guidelines for the implementation of the right to adequate housing](#), Geneva: OHCHR,

<sup>12</sup> National Taskforce for Human Rights (2021) *ibid*

<sup>13</sup> Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993

The fact that rights are inter-connected does not prevent national and local governments from prioritising actions and resources on issues they judge to be the most pressing. This is so long as such decisions are proportional, transparent and supported by evidence and that progress towards other rights does not deteriorate. For social landlords, these principles suggest that while they can focus efforts on issues that they jointly agree with tenants are the most salient to address, this cannot be to the exclusion of actions to respect other rights. For example, social landlords cannot seek to keep rents affordable by asking tenants to accept poorer service standards than set out in law and regulations.

Overall, human rights require services to be person-centred. For example, in cases of domestic abuse, social landlords need to respond rapidly and work with the victim to agree a course of action to keep them housed and as safe as possible rather than presume they should be directed to the local homelessness service<sup>14</sup>. Likewise, in reviewing the needs of a disabled person, social landlords should consider not just dwelling accessibility, but the person's housing needs that arise from their health, gender and so on plus the housing needs of other members of their household.

Social landlords have other levers they can use to support tenants and other service users exercise their human rights, some of which extend beyond traditional landlord functions. For instance, they can use procurement to create routes to secure access to employment and training for tenants and members of their family. They can provide welfare and monetary advice to help address poverty and indebtedness. They can also lead on, or support community development activities to foster positive community relations between different resident groups and enhance community resilience.

### **Access to remedy**

As noted already, a key human rights principle is access to effective remedy and legal redress. It is for the Scottish Government to ensure courts and tribunals adjudicate on human rights abuses and that financial and other barriers do not prevent people from seeking legal address. That said, the Taskforce stressed that as the goal of human rights is to ensure all bodies work to improve the lives of individuals and communities, the need to access courts to enforce rights should be a last resort<sup>15</sup>. Housing providers, and in particular social landlords, will therefore want to ensure their complaints procedures are fair, clear, effective, timely and easy to access by individuals and communities who feel their rights have been infringed by their operations or staff behaviour.

Housing providers should be aware that current case law may not provide a good guide to how courts and tribunals may adjudicate on tenant dispute cases in the future. There is a strong likelihood that courts and tribunals will be required to take account of the full range of human rights. This will have significant, but as yet unknown, implications for eviction cases. However, it seems likely they will be asked to assess proportionality in all eviction cases involving both social and private tenants. They may also be asked to consider the consequences of an eviction and if it could result in homelessness.

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<sup>14</sup> For further details see [Domestic abuse: a good practice guide for social landlords](#)

<sup>15</sup> National Taskforce for Human Rights (2021) [Leadership Report](#), Edinburgh: Scottish Government.

## 2.4 Engagement with rights holders

Engagement and reaching out to rights holders is central to mainstreaming human rights. Without participation and accountability, there is a strong risk that the human rights of tenants and other service users will not be adequately realised. This means housing providers will want to ensure tenants and other service users are involved in decisions that affect them at both an individual and collective level. In doing so, they may want to pay close attention to the Scottish Human Rights Commission PANEL principles<sup>16</sup>.

### Participation, empowerment and accountability

Engaging and empowering people can be challenging, especially if tenants and other rights holders are 'harder to reach', but housing providers, especially social landlords, should look to:

- Use various formal and informal methods of engagement to ensure processes are as inclusive as possible. This includes digital approaches, linguistically and culturally appropriate forms of engagement, and the use of independent facilitators, to tackle under-representation
- Act in good faith and be clear about the purpose of specific engagement activities so that tenants and others do not misunderstand what the outcome of discussions might be
- Make information readily accessible and foster the capacity of tenants and other rights holders to make decisions around service delivery
- Engage in participatory monitoring to enable tenants and other rights holders to scrutinise performance and the changes made.

### Scottish Human Rights Commission PANEL principles

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

**Accountability:** Monitoring how people's rights are being affected and remedies when things go wrong.

**Non-Discrimination and Equality:** All forms of discrimination are prevented and eliminated. People who face the biggest barriers to realising their rights are prioritised.

**Empowerment:** People understand their rights and are supported to take part in developing policy and practices that affect them.

**Legality:** Approaches are grounded in legal rights detailed in domestic and international law.

Engagement extends to how housing providers and their staff interact with tenants and other service users on a one-to-one basis. Often it is these 'moments that matter' most to people in terms of making people feel respected and their willingness to 'open-up' about any difficulties they may be experiencing. Housing providers will therefore look at how they can continue to build trust with all tenants, including interactions by those working on their behalf, such as building contractors.

### Equality and non-discrimination

Human rights require services to be carried out without discrimination. This means a lack of resources or capacity cannot be used to justify persistent discrimination. In reviewing their policy and practice, housing providers should note that the CESCR define disadvantaged, marginalised and vulnerable people more broadly than the nine protected characteristics set out in Equality Act. The CESCR has also stressed the need to ensure "engagement processes allow for the intersectional character of every person"<sup>17</sup>.

As the EHRC explain<sup>18</sup>, the 1998 Act allows social landlords to 'favour' some individuals and social groups if there are good reasons for doing so and the measures taken are proportionate. The Act is largely silent on what this means in practice, but an example would be allocation policies that give 'reasonable preference' to groups such as households accepted as statutory homeless.

<sup>16</sup> Scottish Human Rights Commission (2018) [Human Rights Based Approach-A Self-Assessment Tool](#): Edinburgh: SHRC

<sup>17</sup> CESCR [General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights](#), Geneva: UN

<sup>18</sup> EHRC (2011) [Human rights at home - Guidance for social housing providers](#), London: EHRC

## 2.5 Summing up

Adequate housing is essential for the wellbeing and dignity of tenant households and other service users. Without an adequate home, it is hard for people to exercise other human rights, including family life, privacy, work and health. Adequate housing has particular significance for children, with mounting evidence that homelessness and adversity experienced in childhood can lead to housing instability, poor health and lower life chances in adulthood<sup>19</sup>.

Much remains to be discussed and decided around what adequate housing means in operational terms, the obligations this would place on housing providers and associated resource implications. These discussions would benefit greatly from the experience of housing providers. CIH Scotland therefore urges all housing providers to champion adequate housing and shape national discussions around how adequate housing should be interpreted and the practical steps that are possible to progress adequate housing that fits with different local contexts.

Housing providers could also show leadership and work towards embedding a culture of human rights by enhancing the opportunities and ability of tenants and other right holders to input into improving services and by working towards zero tolerance of sub-standard services and disrespect of tenants and other rights holders. The checklist below has been written with this in mind.

### Checklist for human rights approach and principles

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

<sup>19</sup> Bramley, G. and Fitzpatrick, S (2018) [Homelessness in the UK: who is most at risk?](#) Housing Studies, 33:1, 96-116,

## 3. Security of tenure

### 3.1 Overview

Chapters 3-8 unpack the different elements of adequate housing, with each divided into four sub-sections. The first summarises how the element is understood internationally. The second summarises the key existing and emerging Scottish priorities for each element, reflecting the reality that it is principally for the Scottish Government to stipulate how adequate housing is interpreted and progressed in Scotland. The third looks at ways housing providers might contribute to these priorities in a manner that is consistent with a human rights approach and existing statutory and regulatory requirements. The final section offers concluding remarks and a checklist of key questions to prompt reflection by housing providers, and specifically social landlords.

The introduction of the right to adequate housing will invariably be interwoven with efforts to progress the Scottish Government's aims for Housing to 2040<sup>20</sup>. This will pose big challenges for all concerned<sup>21</sup>. However, adopting human rights principles of accountability, participation, transparency and non-discrimination has the potential to strengthen the legitimacy, trust in, and sustainability of the measures employed to deliver the ambitious 2040 agenda at both national and local level. They also have the potential to reduce the risk of adopting measures that could exacerbate inequalities.

The remainder of this section considers security of tenure. It reflects on the new policies that are emerging to support tenancy security, the existing policies and practice from landlords and principles landlords should adopt when developing their own approach.

### 3.2 Tenure security and international human rights

#### General description of tenure security

Security of tenure is the bedrock of adequate housing and provides the foundation on which the other dimensions are built. It does not give a person a right to "automatically demand a house from the Government"<sup>22</sup> or abolish evictions but instead seeks to prevent homelessness as well as the arbitrary or illegal eviction and destruction of homes. The right extends to people in all tenures, people living in temporary or emergency accommodation.

#### State duties to protect and fulfil tenure security

The Scottish Government is obliged to have statutory protections that ensure evictions are only used as a last resort and are subject to legal procedural safeguards. They also have a duty to ensure people who are evicted can access alternative housing<sup>23</sup>. This may involve rehousing them directly or ensuring they have adequate support and financial assistance to secure another home. As homelessness violates the principle of dignity and negatively impacts on the right to life, health, education and so on, it is generally understood that these duties extend to anyone who becomes homeless for whatever reason. Commentary by the OHCHR, CESCR and Special Rapporteur for Housing stress that tenancy conditions and the regulation of rental housing should protect tenants' rights. Tenancy regulations that limit the grounds for eviction and impose limits on annual rent increases would therefore be permissible. It would however likely be questionable if such measures threaten the overall financial viability of the landlord sector.

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<sup>20</sup> Scottish Government (2021) [Housing to 2040](#), Edinburgh: Scottish Government

<sup>21</sup> Young, G (2021) [The right to adequate housing: are we focusing on what matters?](#) Glasgow: ALACHO and CaCHE

<sup>22</sup> OHCHR and UN- Habitat (2009) [The Right to Adequate Housing Fact Sheet 21](#), Geneva: UN

<sup>23</sup> CESCR (1997) [General comment No. 7 Forced Eviction](#), Geneva, UN

### 3.3 Scottish tenure security policies and emerging priorities

#### Scottish security of tenure framework

Housing provider obligations to respect tenure security are derived from housing strategies, policies and legislation. Starting with the Housing (Scotland) Act 2001, legislation and policies have strengthened tenure security rights for individuals and the duties of public authorities, especially local authorities, to limit evictions and tackle homelessness. These changes have meant, for example, that:

- The Scottish Secure Tenancy (SST) for social tenants has set a high bar in relation to tenure security by international standards
- The private sector residential tenancy introduced through the Private Housing (Tenancies) (Scotland) Act 2016 offers greater tenancy security compared to the previous assured tenancy regime, albeit it offers less protection from eviction than the SST
- Landlords must go to a court or tribunal and secure a decree for eviction from the sheriff court before a sheriff officer can be instructed to enforce an eviction
- Scotland has one of the strongest and most progressive statutory safety nets for homeless people internationally, underpinned by enforceable housing rights<sup>24</sup>.

The [Homelessness in Scotland: 2020-21 Statistical Bulletin](#) shows that:

- The 27,571 households assessed as homeless comprised of 30,345 adults and 11,804 children.
- The average length of stay in temporary accommodation is around 199 days,<sup>23</sup> more than in 2017-19.
- There were 490 breaches of the unsuitable accommodation order.

Despite this, homelessness has shown little sign of diminishing and disproportionately affects vulnerable and disadvantaged groups, such as people from a minority ethnic group (14%<sup>25</sup>). Some families continue to be placed in unsuitable B&B<sup>26</sup> while the high cost of temporary housing can lock people out of their right to work<sup>27</sup>. Homelessness has also intensified pressures for<sup>28</sup> social housing.

Vulnerable and disadvantaged groups are also over-represented in the PRS. Some 32% to 50% of all people from different ethnic minority groups are private renters compared to 11% of white Scottish and/or British households<sup>29</sup>. Many private renters from all backgrounds have also not yet signed a private residential tenancy<sup>30</sup>.

This is one reason why private renters remain more vulnerable to eviction than other households. Other reasons include their greater exposure to a risk of rent arrears and illegal evictions, with the latter persisting during the COVID-19 crisis, despite the temporary ban on evictions<sup>31</sup>.

<sup>24</sup> Anderson, I. (2012) Responding to homelessness: rights-based approaches, in: Smith, S (Ed) The International Encyclopaedia of Housing and Home (Oxford: Elsevier).

<sup>25</sup> Scottish Government (2021) [Housing needs of minority ethnic groups: Evidence review](#), Edinburgh: Scottish Government

<sup>26</sup> See for example the number of unsuitable accommodation order breaches.

<sup>27</sup> Watts, B., Littlewood, M., Blenkinsopp, J., & Jackson, F. (2018). [Temporary Accommodation in Scotland](#), Social Bite.

<sup>28</sup> Dunning, R., Moore, T., Ferrari, E., Hoolachan, J., Keskin, B., Powell, R. and O'Brien, P. (2020) [Affordable Housing Need in Scotland post 2021](#). Scottish Federation of Housing Associations, Chartered Institute of Housing and Shelter Scotland.

<sup>29</sup> *ibid*

<sup>30</sup> *ibid*

<sup>31</sup> Davidson, J. (2021) [Locked out: tenants in Scotland have faced losing their homes, even during the pandemic](#), Holyrood



## Emerging policy priorities

In response to systemic weaknesses, an ambitious policy agenda to end homelessness and return the homelessness system to a safety net rather than a default response to housing problems is now in train<sup>32</sup>. The emphasis is on tackling chronic single homelessness and rough sleeping, rapidly rehousing of homeless people in affordable, secure and decent accommodation and collective responsibility for preventing homelessness. Amongst the myriad of recent ongoing measures or proposals are:

- The abolition of the 'tests' of intentional homelessness and local connection
- The expansion of 'Housing First' the ending of night shelters, hotel and B&B provision and the introduction of temporary accommodation standards
- Early intervention and person-centred support, including personal housing plans and case co-ordination for people that need support from multiple services
- Legislation that has allowed social landlords to transfer the tenancy to victims of domestic abuse if this is their preference
- The extension of the social landlord 'pre-action requirements' duty to private landlords on a permanent basis to reduce the risk that rent arrears result in eviction action
- A local authority duty to intervene to prevent homelessness six months before someone faces losing their home to prevent someone leaving an institution without accommodation
- A national programme to facilitate access to private lettings for homeless households, and commitment to stabilise private rents and improve regulation of the private rented sector.

### Case study: Linthouse HA Welfare Advice Service

Linthouse HA's Welfare Rights Service aims to maximise tenant incomes, sustain tenancies, and avoid evictions.

One person they worked with had their Housing Benefit suspended. The welfare rights team found out that the tenant's former partner was potentially continuing to claim at the tenant's address but judged that the tenant was still entitled to Housing Benefit. As arrears continued to increase pending their appeal, the tenant was offered ongoing advice, support and reassurance by their housing officer and the welfare rights team.

The appeal was successful, generating a back pay of over £3,000, which cleared the tenant's rent arrears. Through this process, Linthouse HA was able to protect the tenant from eviction.

The Scottish Government has also confirmed it will provide public finance to support delivery of 77,000 social homes by 2032. It has also confirmed it is to enhance the rights of private tenants (see section 5), introduce a homelessness prevention duty for public bodies, and develop an anti-destitution strategy focused on people with recourse to public funds (NRPF).

The overall package of priorities is consistent with the UN expectation that states should extend legal security of tenure security to those lacking protection<sup>33</sup> and should prevent and eliminate homelessness as swiftly as possible<sup>34</sup>.

<sup>32</sup> See [Ending Homeless Action Plan 2018; Updated Action Plan-2020](#) and [Prevention Review Group Report 2021](#).

<sup>33</sup> CESCR (1991) [General Comment 4, The right to adequate housing](#), Geneva: United Nations

<sup>34</sup> Special Rapporteur (2019) [Guidelines for the implementation of the right to adequate housing](#), Geneva: OHCHR,

### 3.4 Housing providers role in protecting tenure security

The Scottish Government’s Social Housing Charter sets out standards individuals should expect from their social landlord. As table 3.1 shows, two key roles for social landlords are services that sustain tenancies, minimise evictions or other unwanted moves and services that can step in and end homelessness as swiftly as possible.

**Table 3.1 Social Housing Charter Outcomes relevant to tenure security**

Charter outcome	Summary description
9. Housing Options	People at risk of losing their homes get advice on preventing homelessness.
11.Tenancy Sustainment	Tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and other organisations.
12. Homeless People (applies only to LAs)	Homeless people get prompt and easy access to help and advice; are provided with suitable, good-quality temporary or emergency accommodation when this is needed; and are offered continuing support to help them get and keep the home they are entitled to.

Scottish Government (2017) The Scottish Social Housing Charter, Edinburgh, Scottish Government

Collectively, housing providers also play a key role alongside national and local government to resolve structural and systemic issues, especially deficiencies in housing supply, that are central to ending homelessness and progressing adequate housing. However, as the minimum core obligations set in international law and the Scottish homelessness agenda both focus mainly on prevention and rapid rehousing, the following paragraphs centre on the first two roles.

#### **Tenancy sustainment and minimising evictions**

Social landlords understand that evictions are damaging and costly for tenants and strive to work with tenants, even when legal action is underway, to prevent evictions occurring. Social landlords typically use a range of actions to sustain tenancies that are potentially consistent with respecting human rights. This includes the examples listed in table 3.2, some of which are referred to in the [Scottish Government’s Social housing allocations in Scotland: practice guide](#).

**Table 3.2: Examples of actions that can help to sustain tenancies**

Theme	Possible actions
<b>Pre tenancy arrangements</b>	Provision of information in different formats and targeted at different audiences so that people are better informed about their housing rights and choices.
	Allocation practice ensures, as far as practically possible, individuals feel the property and its location will work for them and other members of their household.
	Void reletting standards ensure properties are ready to live in without the need for significant decoration, possibly extended to include including basic flooring covering and curtains.
<b>Settling in support</b>	Settling in visits with new tenants are carried out to ensure any snags and unmet support needs are promptly identified and addressed.
	Tenants are helped to (possibly via Social Welfare Fund applications) obtain basic furniture and white goods and, if necessary, tenancy starts are delayed until such goods are in place.
<b>Alleviating financial hardship</b>	Offer tenants the option of buying or renting low-cost furniture packages to lower the costs of making a dwelling a home and reduce the risk of mounting debt.
	Employ or make use of external money and debt specialists to assist with budgeting, claiming social security entitlements, charitable hardship funds and dealing with appeals.
	Provision of small grant (or goods) to help people overcome an immediate crisis (food parcels, bus pass to attend interview, help to replace broken white goods etc).
<b>Rent collection</b>	Flexibility around reclaiming rent arrears, such as freezing arrears payments for a period until a tenant's situation improves, so long as rent is regularly paid.
	Use an independent third person to facilitate engagement between the tenant and landlord to ease tenant stress and anxiety about the situation and the possible outcome.
	Adoption of the HACT rent-flex model that allows tenants to vary rent payments over a year.
<b>Support for vulnerable people</b>	Systems are in place to identify women likely to be experiencing domestic abuse and work with them and other partners to keep them safe in their own home, if this is their preference.
	Good referral networks with support, befriending and mentoring services that offer more intensive or specialised support for vulnerable people (poor mental health, substance abuse, hoarding, repeated ASB complaints from neighbour etc).
	Provision of mediation services where conflicts threaten tenancy sustainment, such as relationship breakdown, neighbour disputes and landlord and tenant disputes.
<b>Oversight and accountability</b>	Plans to demolish homes are developed in full dialogue with everyone who is affected, and every attempt is made to develop solutions which rights holders buy into.
	Real-time tenant data and rent payment data are analysed to help target homeless prevention work and to help tailor advice and support offered to individual needs.
	Tenancy terminations, especially those that end within months, are regularly reviewed to identify possible steps that could be taken to reduce tenancies likely to end in homelessness.

## Rapid rehousing of people who are homeless

Rapid rehousing aims to limit people's experience of homelessness in the shortest time feasible. Tenancy support and income maximisation services can help to resolve as well as prevent homelessness. However, human rights friendly approaches that are more specifically aimed at rapid rehousing include:

- Ensuring a good proportion of lettings are going to statutorily homeless households
- The provision of resettlement support for people leaving temporary accommodation or institutional settings
- Home First or making dwellings available for such initiatives
- Managed transfers of tenants being evicted, including reciprocal arrangements between landlords in relation to the provision of support and/or rent arrears
- Improved practice around the use of S11 requirements by all parties<sup>35</sup>.

### It's the way that you do it

A fundamental principle for a human rights based approach is to place people at the heart of service development and delivery. This underlines that upholding tenure security should be a person centred process and that policies should be sufficiently flexible to allow staff to work in a manner that is sensitive to a tenant's particular circumstances. This might, for example involve:

- Acting swiftly but with empathy to engage with a tenant as soon as rent arrears arise or there are signs that a tenant may be having other difficulties sustaining their tenancy
- Using clear and supportive language and active listening to empower individuals to make shared decisions around the support they will receive to sustain their tenancy
- Persevering, sometime in the face of other neighbour complaints, to build a relationship with tenants that are difficult to engage and find out why they avoid engaging rather than assuming they do not want to engage
- Working with the tenant, local authority and any support workers to seek alternative accommodation and avoid homelessness when there is no other option left but eviction
- Ensuring any disclosure of personal information about a person and their personal and financial circumstances respects a person's right to a private life.

### Case Study: Wheatly Group Housing First

The Wheatley Group's Housing First service provides tailored support to help someone to sustain their tenancy once homed and to rebuild their lives, whatever their needs.

John, a military veteran and former nurse always felt more at home outdoors and spent much of his adult life living in a camp site whilst serving in the armed forces. John said he felt 'trapped' living in a house, and so remained camping until he was taken into hospital. As John could not continue living outdoors after being discharged, he moved to a Shelter.

A few months later, John was offered a home of his own via the Wheatly Group's Housing First. After he refused the first offer, staff identified a home in an area that John was familiar with and was willing to try.

John initially struggled and felt as though the walls were 'closing in like before' but said "the Housing First support staff were 'incredible', and stood by me every step of the way, doing 'everything they could to help me adjust to living in my own home'".

John has now been in his house for almost 3 years. He says that he now loves his home thanks to the support of the staff and that he can now see himself living there for the rest of his life.

<sup>35</sup> SHN (2020) [Preventing Homelessness: Averting Evictions: A Section 11 Process Guide](#), Edinburgh Scottish Housing Network

### 3.5 Concluding remarks on tenure security

Scotland's strategy for ending homelessness mirrors the ethos of adequate housing but even before this, Scotland's homeless approach was judged to be more person-centred and holistic than elsewhere in the UK<sup>36</sup>. The renewed focus on prevention should reduce the numbers of tenants evicted into homelessness, which Liverpool University conservatively estimates cost an average of £14,924 for social tenants in 2018-20<sup>37</sup>.

On the other hand, it is unclear whether current levels of financial and human resources are sufficient to secure the level of progress expected by 2023. The effectiveness of partnership working across statutory and voluntary agencies remains patchy. In addition, the underlying evidence base, especially around evictions and tenancy status in the private rented sector, does not fully support transparent monitoring and accountability<sup>38</sup>.

Delivery will depend on the willingness and ability of landlords to continue to respond quickly and flexibly to the needs of households that respects their human rights and dignity. It will also depend on whether better working relationships between tenants, housing staff and other service providers delivers better opportunities to identify and respond to problems earlier and more effectively.

#### Tenure Security checklist (social landlord focused)

- Is your organisation's leadership committed to a culture of reaching out to residents and intervening early to deliver person centred support to enable people remain in their own home?
- Are void homes being relet on permanent or temporary basis of a sufficient standard to comply with national obligations and allow individuals and families to live safely and in comfort?
- How are you using human rights to balance competing allocation objectives and increase emphasis on people sensitive allocations whilst still adhering to Scottish Government allocations guidance?
- How well does your organisation's tenancy sustainment approach really ensure evictions are only used as a last resort and that tenants' right to an adequate home is not being compromised?
- Is the tenancy sustainment approach working for different groups of residents or do one or more disadvantaged and vulnerable groups remain comparatively more exposed to eviction?
- What reciprocal provisions are in place to promote managed moves and make sure that evicted tenants secure an alternative home and do not end up homeless?
- Are you using the domestic abuse good practice guide to implant a proactive and collaborative approach to enable women experiencing domestic abuse to avoid becoming homeless?
- How is the knowledge and expertise of staff in unpacking the needs of vulnerable tenants, working with external support providers and participating in multi-agency case-based work being preserved, shared and built on?
- How is real time evidence and tenant feedback being used to inform further development of your organisation's contribution to tenancy sustainment and rapid rehousing?

<sup>36</sup> Eisenstadt, N. (2016) [Independent Advisor on Poverty and Inequality: shifting the curve: report for the First Minister](#), Edinburgh Scottish Government.

<sup>37</sup> Lord, A. and Gu Y (2011) [Understanding the True Cost of Evictions in Scotland](#), Edinburgh: Shelter Scotland

<sup>38</sup> Watts, B., Bramley, G., Fitzpatrick, S., Pawson, H. & Young, G. (2021) [The Homelessness Monitor: Scotland 2021](#), London: Crisis.

## 4. Habitable and with access to the necessary services

### 4.1 Introduction

This section considers housing quality. It combines discussion of both habitability and the provision of services as both measures are typically combined in Scottish quality standards such as the Tolerable Standard and the Scottish Housing Quality Standard.

### 4.2 House conditions and internal human rights

#### General description of habitability and service provision

The CESCR stress that the physical quality of homes and health are interwoven. Building on this, an adequate home is expected to be habitable and provide enough space and protect residents from cold, damp, fire and other structural threats to the physical safety and health of residents. An adequate home should also have available facilities essential for health, security, comfort and nutrition, such as safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities and site drainage.

#### State duties to protect and fulfil the right to homes of a decent physical standard

The CESCR advise that homes that are built and designed in a way that constitutes a significant health and safety threat to occupants, or are not maintained to an adequate standard, violate the right to adequate housing. It therefore expects each state to set specific standards for what constitutes a decent physical standard for new and existing homes, which are consistent with the particularities of the country and are agreed through dialogue with rights holders and other stakeholders. It also expects these domestic standards to be used to drive policy and hold the state to account.

### 4.3 Scotland's housing quality policy agenda

#### Existing Scottish housing quality framework

Scotland's existing policy framework for the physical condition and maintenance of existing homes is outmoded. The most basic housing standard is the all-tenure Tolerable Standard. Introduced in 1969, it details minimum physical conditions and services a property must meet to be fit for habitation. It is embedded in the Scottish Housing Quality Standard (SHQS) and the Repairing Standard, which impose additional duties on social landlords and private landlords respectively. Social landlords also must deliver the Energy Efficiency Standard for Social Housing (EESH).

Standards for newly constructed homes are set out in The Building (Scotland) Regulations 2004 and include energy efficiency, accessibility and fire safety requirements. New grant-aided affordable homes are also generally expected to meet the 'basic' 1999 Housing for Varying Needs Standard (HfVN), which seeks to enhance the accessibility of homes for people of all ages. The net result is that both existing and new social homes must meet higher standards than those in the private sector.

Adequate space has been incorporated into Scots law since the 1960s and was reiterated in the Housing (Scotland) Act 1987. It confirms that a home is overcrowded if it fails either the room standard or space standard. The space standard limits the number of people who can occupy a house, relative to both the number and floor area of the rooms available as sleeping accommodation. The room standard sets minimum limits based on the number of rooms suitable for sleeping relative to the household size and composition. In practice, measures of over-crowding only report on the room standard as it is easier and cheaper to measure. Social landlords typically use a somewhat more generous variant of the room standard in the policies for allocating homes.

## Emerging priorities for housing quality

The Scottish Government has set out plans to modernise housing standards for new and existing homes in all tenures. The Heat in Buildings Strategy and Housing to 2040 confirm that this will include:

- A new minimum Scottish Housing Standard to replace the Tolerable Standard, covering new and existing homes., including agricultural properties, mobile homes and tied accommodation.
- New Building Standards from 2025/26, which will include a new Scottish Accessible Homes Standard, effectively updating the HfVN.
- Various measures to decarbonise heating systems and improve the energy efficiency of homes, such that homes attain EPC Band C by 2033 (Band B for social rented homes and by 2028 for private rented dwellings). This will necessitate major changes to the EESSH and Repairing Standard to align them with this agenda.
- Work to bring digital connectivity to all homes, starting with new social rented homes and to progress the Scottish Parliament working group’s recommendation on tenement maintenance.

## 4.4 Housing providers and upholding housing quality

### Delivering and maintaining physical condition standards

The two Scottish Social Housing Charter outcomes that relate to housing quality focus on delivering and maintaining physical conditions (see table 4.1). According to the Scottish Housing Regulator<sup>39</sup>, in 2020-21 some 91% of social homes complied with the SHQS and 89% complied with the current EESSH standard. A large majority of tenants were also satisfied with their home and its upkeep (see figure 4.1). On the other hand, over 77,600 social homes did not meet the SHQS standard for one reason or another. The Scottish House Condition Survey<sup>40</sup> suggests this figure could be higher.

**Table 4.1 Social Housing Charter Outcomes relevant to habitability and the provision of services**

Charter outcome	Summary description
4. Quality of Housing	Social landlords manage their businesses so that tenants’ homes, as a minimum, meet the SHQS, when they are allocated, are always clean, tidy and in a good state of repair; and meet the Energy Efficiency Standard for Social Housing by December 2020.
5. Repairs, maintenance and improvements	Social landlords manage their businesses so that tenants’ homes are well maintained, with repairs and improvements carried out when required, and tenants are given reasonable choices about when work is done.

The Scottish Social Housing Charter: April 2017, Scottish Government, 2017

Social rented homes classed as ‘exempt’ or ‘in abeyance’ are not required to meet the SHQS<sup>41</sup>, but it is not clear that this arrangement would be permissible if the right to adequate housing is enacted. The principle of progressive realisation seems to imply that technical challenges or disproportionately high cost reasons would be sufficient reasons to exempt a property on a permanent (as opposed to a temporary) basis. The zero emissions agenda for existing homes may also impact on Scottish Government’s willingness to allow exemptions and abeyances to persist.

<sup>39</sup> SHR (2021) [Scottish Social Housing Charter: Headline Findings 2020-21](#) and accompanying excel data

<sup>40</sup> Scottish Government (2020) [Scottish House Condition Survey: 2019 key findings](#), Edinburgh, Scottish Government

<sup>41</sup> Scottish Government (2021) [SHQS Technical Guidance Update](#), Edinburgh: Scottish Government.

**Figure 4.1: Social tenant satisfaction with quality of home and services, average 2016/17-2020/21**



There is a great deal of uncertainty around how landlords will manage and finance work to deliver greener homes and how this might impact on tenants. A lot will rest on how the Scottish Government respond to the ZEST report<sup>42</sup>. In the meantime, social landlords may want to reflect on lessons from the Scottish Human Rights Commission (SHRC) work in Leith<sup>43</sup>. It used a human rights approach to secure greater participation of residents in efforts to improve their homes. It suggests that:

- SHQS exemptions and abeyances should not be interpreted as an acceptance of inaction as social landlords have human rights obligations to ensure tenants homes are of an adequate physical standard.
- The importance of engaging with tenants and the time and resources needed to agree an acceptable way forward should not be under-estimated.
- Social landlords cannot rely solely on aggregate SHQS and tenant satisfaction data to judge if the right to adequate housing is being upheld. That said, the in-depth stock condition surveys needed to support the net-zero agenda may provide an opportunity to dig deeper on quality issues that matter to tenants.

### Case Study: Blackwood Design Guide

The ground-breaking 'Blackwood House & Design Guide' offers a blueprint for constructing accessible and connected homes that enable people to live as independently as possible and to self-manage health and wellbeing without the requirement for major alterations or adaptations.

The guide builds on the experience of co-designing homes with customers and architects. It sets out key design principles and includes layouts for units of different sizes that include space standards, energy efficiency standards, outline specifications for components and technology, and options for construction such as off-site manufacturing.

To accommodate the 'Glasgow Standard' for accessible design, the guide drew on the Helenvale development, which included underfloor heating and solar panels to meet proposed future energy efficiency standards in support of Scotland's net zero ambitions.

One tenant who had lived in a care home for six years prior to moving to Helenvale spoke of her delight with her flat and that her family could now visit her in her own home. She also spoke about how independent she now is and about looking forward to her future.

<sup>42</sup> ZEST (2021) [Achieving Net Zero in Social Housing, the Zero Emissions Social Housing Taskforce](#), Scottish Government

<sup>43</sup> SHRC (2020) [Housing Rights in Practice: Lessons learned from Leith](#), Scottish Human Rights Commission



## Lifetime homes and accessibility standards for new homes

The Convention on the Rights of Persons with Disabilities – a treaty ratified by the UK – reaffirms that the right to adequate housing extends to people with disabilities<sup>44</sup>. The Scottish Government is therefore obliged to ensure disabled people are consulted on the design of new homes and that homes are “physically and economically accessible to persons with disabilities”. Plans to modernise the HfVN standard should help to meet this obligation. This is something that social landlords, disability groups and agencies representing older people have been calling for this for a decade or more. In the interim, the Blackwood development in Helensvale and the accompanying [Design Guide](#)<sup>45</sup> demonstrate what can be achieved by co-producing new homes with tenants and other residents.

## Overcrowding

Social landlords have a duty to give reasonable preference to households that experience overcrowding, especially if overcrowding endangers the health of someone in a household to the extent they could be classed as statutory homeless<sup>46</sup>. Overcrowding in Scotland is low by UK standards, but it remains a chronic problem for larger families and households from ethnic minority groups. Setting aside allocations, which are discussed in section 6, there are ‘bricks and mortar’ options for resolving overcrowding such as building or buying larger homes, property extensions and knocking through two properties to create a single home. From a human rights perspective the key is to ensure that possible options are discussed with, and the preferred solution is, (as far as possible) jointly agreed with, not dictated to, any tenant whose home is overcrowded.

## 4.5 Concluding remarks on housing habitability and the provision of services

Although it is not clear at this point what the new Human Rights Bill will include, the proposed Scottish Housing Standard could become one of Scotland’s minimum core obligations for adequate housing. The Scottish Government could opt for a more ambitious benchmark to reflect its zero-carbon ambitions, but this seems unlikely given the range of technical and financial issues still to be resolved and uncertainty around how housing providers and the wider public will react once the real financial and tax implications of detailed plans are known.

### Checklist for housing quality

- What opportunities do tenants and other local residents have to be involved in the planning and design of new or refurbished homes?
- Has your organisation used the Blackwood Design Guide and site visits to raise awareness and explore what is possible?
- What plans are in place to address homes that do not meet SHQS or EESSH standards and have they been prepared and costed in dialogue with tenants and other residents?
- Do people know what standard of home, repairs and amenities they can expect when they accept a tenancy? What role do tenants play in devising and monitoring these standards?
- Do residents find it easy to be ‘digitally connected’ at home or are there barriers to achieving this and, if so, how can they be overcome?
- How are the needs of disadvantaged and vulnerable groups accounted for and reflected in your organisation’s maintenance and investment programmes?

<sup>44</sup> United Nations General Assembly (2006) [The Convention on the Rights of Persons with Disabilities](#), Geneva: UN

<sup>45</sup> The Blackwood Group (2018) [Blackwood Employers Requirements/Design Guidance](#), Edinburgh: f

<sup>46</sup> Scottish Government (2019)

## 5. Affordability

### 5.1 Introduction

This section considers the affordability of rented housing, but it also contains a brief discussion of the affordability of factoring services.

### 5.2 Affordability and international human rights

#### General description of affordability

For the OHCHR and the CESCR, the affordability of housing is pivotal to the right to protection against poverty and social exclusion<sup>47</sup> as well as the right to adequate housing<sup>48</sup>. Therefore, there is an expectation that households of varying composition have sufficient income after paying for adequate housing that their ability to pay for food, fuel and other essentials is not compromised. There is also an expectation that households should be protected against unreasonable rents and rent increases. Furthermore, the UN Convention on the Rights of Children – ratified by the UK and in the process of incorporation into Scots Law – guarantees the rights of children to adequate housing<sup>49</sup>. The UN has stressed that the lack of affordable housing exposes children from disadvantaged households to a high risk of growing up in overcrowded and poor quality housing that is exposed to unsafe environments<sup>50</sup>.

#### State duties to protect and fulfil affordability

The CESCR, and more especially the Special Rapporteur on Housing<sup>51 52 53</sup> have provided clear indication about what is required to progress affordability, stressing that states should:

- Provide housing finance or subsidised housing for people unable to afford open market housing
- Provide housing allowances for individuals to help them pay their housing costs
- Regulate the private rented sector to prevent landlords from setting unreasonably high rents or annual rent increases relative to household incomes
- Address the upstream causes of the financialization such as speculation on, and the under-utilisation of, private land and housing that has driven up housing costs.

The recent resolution adopted by the UN Human Rights Council in 2020 also stressed the need to curb factors that result in a lack of affordable housing, including housing speculation and financialization<sup>54</sup>.

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<sup>47</sup> OHCHR (2012) [Principles and Guidelines for A Human Rights Approach to Poverty Reduction Strategies](#) Geneva: OHCHR

<sup>48</sup> CESCR (1991) [General Comment 4, The right to adequate housing](#), Geneva: UN and OHCHR

<sup>49</sup> OHCHR (1989) [Convention on the Rights of the Child, \(Article 27\)](#), Geneva: UN and OHCHR

<sup>50</sup> Special Rapporteur on extreme poverty and human rights (2021) [Extreme poverty and human rights – report to UN General Assembly](#), Geneva: UN

<sup>51</sup> Farha, L (2016) [Human rights-based national housing strategies](#), Geneva UN

<sup>52</sup> Rolnik, R. (2012) [Impact of housing finance policies on the right to adequate housing of those living in poverty](#), Geneva: UN

<sup>53</sup> Rolnik, R. (2012) [Impact of housing finance policies on the right to adequate housing of those living in poverty](#), Geneva: UN

<sup>54</sup> Human Rights Council (2020) [Resolution adopted by the Human Rights Council on 19 June 2020](#), Geneva, UN

### 5.3 Scotland's rental affordability framework

*"Our aim is for everyone to have access to a home that is affordable and choices about where they live, no matter what tenure they live in"<sup>55</sup>.*

Housing to 2040 confirms that sustained efforts to improve housing affordability is a high priority. The difficulties people face in finding a suitable home that they can afford have also been articulated in cross-cutting policies. Both the Fairer Scotland Duty Guidance<sup>56</sup> and the Child Poverty Delivery Plan<sup>57</sup> stress that housing costs can be a driver of poverty and that local actions to tackle poverty and inequality should include measures to improve housing affordability.

Along with the Draft Shared Policy Programme<sup>58</sup> and the Programme for Government<sup>59</sup>, Housing to 2040 confirms that the Scottish Government wants to develop a shared understanding of affordability fit for the future and will seek to:

- Deliver 110,000 affordable homes by 2032, of which at least 70% will be for social rent and 10% will be in our remote, rural and island communities
- Develop a Rented Sector Strategy to address availability, affordability and standards in the private and social rented sectors, with a draft due by the end of 2021
- Continue to bring empty homes back into use (preferably for social rent)
- Continue to provide Discretionary Housing Payments (DHPs), which assist people in accessing private renting as well as fully mitigating the 'bedroom tax' for households in the social rented sector
- Give local authorities greater ability to manage the impact of second homes and explore how to better support housing cooperatives and Community Housing Trusts
- Finalise the Fuel Poverty Strategy and establish a Fuel Poverty Advisory Panel to advise Ministers on progress in tackling fuel poverty
- Address structural issues that contribute to affordability problems and reform Council Tax.

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<sup>55</sup> Scottish Government (2021) [Housing to 2040](#), Edinburgh: Scottish Government

<sup>56</sup> Scottish Government (2020) [Fairer Scotland Duty: interim guidance for public bodies](#), Edinburgh: Scottish Government.

<sup>57</sup> Scottish Government (2018) [Every child, every chance: tackling child poverty delivery plan 2018-2022](#), Edinburgh: SG

<sup>58</sup> Scottish Government and Scottish Green Party (2021) [Draft Shared Policy Programme](#), Edinburgh: Scottish Government

<sup>59</sup> Scottish Government (2021) [A Fairer, Greener Scotland: Programme for Government 2021-22](#), Scottish Government

The Rented Sector Strategy is to include proposals to:

- Increase tenants' rights, such as actions to prevent winter evictions, and increase penalties and compensation for illegal evictions
- Legislate for a national system of rent controls and revamp Rent Pressure Zones to allow local authorities to control rents in pressured areas
- Establish a private rented housing regulator to raise standards and enforce tenants' rights
- Introduce a possible rent guarantor scheme for estranged young people.

Improving housing affordability and reforming the private rented sector present big challenges. Even with significant Scottish Government funding, extraordinary efforts will be required by social landlords to fund new homes and retrofit and de-carbon existing homes without social rents becoming increasingly unaffordable and pushing up levels of fuel poverty. The case for stabilising private rents and better regulation of that sector may be strong, but the policy and practical detail has yet to be scoped out, including the resources required to ensure implementation, compliance and enforcement.

Welfare reform has made it harder for many tenants, especially private tenants and larger families, to pay rent. As social security is largely a reserved matter, the Scottish Government's ability to strengthen the safety net for renters is limited. However, it has maintained the Discretionary Housing Payments (DHP) budget and is to extend the Scottish Child Payment to those aged 6-16 years by the end of 2022 and thereafter increase this payment from £10 to £20 per week. The Scottish Government also has plans to explore "a Minimum Income Guarantee and Universal Basic Services", which they claim could "revolutionise public services and lift many children out of poverty"<sup>60</sup>.

## 5.4 Housing providers role in protecting affordability

### Rent setting and affordability

To date, the Scottish Government has operated a light touch approach to regulating social rents, leaving social landlords free to set their own rents, subject to legal and regulatory requirements. These requirements are detailed in the Charter (see table 5.1). The Charter also states that social landlords:

- Have a legal duty to consult with tenants and other service users about their rent and service charge policy and annual uplifts to such charges
- Are required to take account of what current and prospective tenants and other service users are likely to be able to afford.

Assessing the affordability of rents and other charges presents major challenges for social landlords. There is no consensus about how affordability should be measured and understood. Official data on the distribution of household incomes within the social rented sector is lacking, reflecting the difficulty and high cost of gathering reliable income data. In setting rents, social landlords also have to consider their own financial and business objectives and 'balance the books'.

The National Charter reports that in 2020-21:

- The average weekly rent was £78.09 for local authorities and £89.74 for RSLs
- 83% of social tenants are satisfied their rent is good value for money

The National Panel of Tenants and Service Users survey indicates that in 2021:

- 17% experienced difficulties paying their rent in the last year
- 38% experienced difficulty heating their home within the last 12 months
- 64% were concerned about affording their rent in the next few years.

<sup>60</sup> Scottish Government (2021) [Tackling child poverty: third year progress report 2020-2021](#), Edinburgh: Scottish Government

**Table 5.1: Social Housing Charter Outcomes that relate to affordability**

Charter outcome	Summary description
13. Value for Money	Social landlords manage all aspects of their business so that tenants, owners and other customers receive services that continually improve value for the rent and other charges they pay
14. & 15: Rents & Service Charges	<p>Social landlords set rents and service charges in consultation with their tenants and other customers so that:</p> <ul style="list-style-type: none"> <li>• a balance is struck between the level of services provided, the cost of the services, and how far current and prospective tenants and service users can afford them</li> <li>• tenants get clear information on how rent and other money is spent, including details of any individual items of expenditure above thresholds agreed between landlords and tenant</li> </ul>

The Scottish Social Housing Charter: April 2017, Scottish Government, 2017

In the absence of official guidance for landlords on how to assess affordability, social landlords are now making greater use of [the SFHA and HouseMark Rent Setting Tool](#) to explore whether possible rent charges are likely to be affordable and are in alignment with other social rents in the same area. Launched in 2018, the on-line tool reports on five affordability measures: rent to income ratios, proposed rent as a percent of market rents and local LHA rates, disposable income after paying rent, and disposable income relative to the JRF Minimum Income Standard.

### Engaging tenants in rent setting

Rent is the main source of income for social landlords and is typically the main item of household expenditure for tenants. Engaging tenants and listening to their views about the rents and the services they pay for prior to any change in rents and how they are set, underpinned by clear information on how rental income is spent, and feeding back how these views were allowed for, is therefore central to a human rights approach.

Like many aspects of a human rights approach, this is something social landlords should be doing already. As the SHR has said, tenant engagement should allow tenants to express informed views on options for different rent levels with clear information on what they mean for services and investment in homes. SHR has also confirmed that the way affordability is assessed should be clear to tenants<sup>61</sup>.

### Case Study: South Lanarkshire rent setting

South Lanarkshire Council use the HouseMark Rent Affordability Tool to promote meaningful and constructive engagement on rents. Essentially, the tool is used with different tenant groups to allow tenants and staff to visualise and discuss the affordability of rents and how rents for different house types and sizes compare to other local authorities and RSLs.

The tool uses modelled household incomes that reflect local earnings, meaning landlords do not need detailed tenant income data. To use the tool, you select local authority area and the number of bedrooms and input the proposed weekly rent. A red-amber-green result shows the percentage of likely income spend on rent.

Following tenant consultation, the council proposed a 2.2% rent increase for 2021/22, ensuring that the council continues to set the lowest rents in Scotland.

<sup>61</sup> SHR (2016). [How social landlords consult tenants about rent increases. A thematic inquiry](#), Glasgow, SHR

If tenants and other service users are to give an informed view, they need to know and understand how rents are set, how their money is spent and whether this is delivering value for money. In other words, value for money should be embedded in social landlords work with tenants.

Social landlords may find it useful to refer to [How do you know if you are providing value for money?](#)<sup>62</sup> Produced in 2015, it looks at how to ensure tenants can see the relationship between what they pay, costs, and the outcomes achieved in terms of high quality homes and services.

Social landlords may also wish to refer to the SFHA Rent Setting Guide<sup>63</sup>. While the accompanying excel tool has been superseded by the affordability tool noted above, the guide's discussion of the process of rent setting and value for money remain pertinent.

## Factoring services

Social landlords' duty to respect the rights and dignity of individuals extends to other service users, including homeowners that pay for a factoring service. The SHR reports indicate factored owners are less satisfied than tenants with the cost and quality of services<sup>64</sup>. Social landlords will therefore want to look at whether they are delivering parity of treatment between tenants and homeowners when it comes to engagement on service standards, charges and other issues that matter to homeowners.

## Other options to alleviate poverty and disadvantage

Aside from keeping rents and other charges affordable, social landlords can help to alleviate the damaging effect of poverty in other ways. As noted earlier, social landlords deliver money and welfare advice to increase tenants' disposable income. Improved energy efficiency and district heating can ease fuel poverty. Social landlords can offer [First Month's Rent Flexibilities](#)<sup>65</sup> to allow for delays in Universal Credit payments. Social landlords also run projects to improve health, wellbeing and employability, examples of which are noted in section 7. The important issue is to engage tenants around the benefits and cost of these services.

### Case Study: Port of Leith HA Community Works

The Community Works project helps residents in North Edinburgh to find work or volunteer. Its services include free accredited training and CV creation.

## 5.5 Concluding remarks

Prior to the pandemic, annual rent uplifts had been outstripping changes in tenant incomes, at least at the aggregate level. The factors driving this trend, and their relative impact, remains to be independently evaluated but increased investment in the quality and energy efficiency of existing homes and the expanded social rented development programme have been contributory factors.

The dilemma is that while higher rents can produce more funding to support new homes and retrofit programmes, allowing more households to access social homes and improve the quality of homes of existing tenants, it risks making rents less affordable for tenants with lower incomes. Looking to the future, human rights obligations make it clear that scrutiny, preferably underpinned by independent monitoring, will be required as to the degree to which Scottish Government subsidies are commensurate with the expectations placed on social landlords and prevent social rents from becoming increasingly less affordable.

More immediately, engaging tenants about rent charges is now more important than ever. In particular, it will be important to explore their continued willingness to pay for new social housing in light of the cost of retrofitting and improvement programmes.

<sup>62</sup> Chartered Institute of Housing, with the Wheatley Group and HouseMark (2015) [How do you know you are providing value for money?.. Defining, managing and demonstrating Value for Money in Scotland](#) Edinburgh, CIH Scotland

<sup>63</sup> Indigo House, (2017) SFHA Guide to Rent Setting and Affordability Tool, Glasgow, SFHA (not online)

<sup>64</sup> SHR (2021) [The National Panel of Tenants and Service Users Reports](#), Glasgow: SFHA

<sup>65</sup> Shelter Scotland and SFHA (2017) [First Month's Rent Flexibilities: Good Practice Guide](#), Edinburgh: Shelter Scotland

## Checklist for affordability

- Does your organisation have a clear view on what rents and other charges are affordable and how has feedback from residents informed this?
- Are elected members or boards seeking assurance on how residents' views and are insights being actively sought and used in setting rents and any annual rent increases?
- Does your organisation understand how rent and other charges impact on the disposable incomes of different groups of residents and their ability to pay for other essentials?
- Do you regularly involve residents in monitoring the affordability of charges for factored owners and those living in any mid-market or private rented homes your organisation owns?
- What steps does your organisation take to deliver value for money and how extensively are tenants engaged in this process?
- How clear is your rent and service charge consultation material and does it contain a range of rent proposals?
- How is resident feedback from the annual rent consultation exercise analysed and used to inform decisions about rent charges for next year and how is this fed back to residents?
- Does your organisation have a strategy to lessen the impact of poverty and inequality? Does this clarify the role housing costs, energy efficiency and supplementary services play in this?
- Do you monitor how services designed to offset financial hardship are accessed and used by residents and whether there is equality of access across the diversity of your resident base?

## 6. Accessibility

### 6.1 Introduction

The following paragraphs consider accessibility and specifically allocation and housing adaptations.

### 6.2 Accessibility and international human rights

#### General description of accessibility

Accessibility gives people the right to a home that is suitable for every member of a household, irrespective of their economic resources or personal circumstances. Consequently, a household that must 'make do' in an unsuitable home is not adequately housed. As accessibility is closely linked to the principle of non-discrimination, priority is expected to be given to disadvantaged and vulnerable social groups. These include, but are not restricted to, people with disabilities, people from minority ethnic backgrounds, low income households, women affected by domestic abuse, people affected by natural disasters, international migrants and refugees.

#### State duties to protect and fulfil accessibility

The Scottish Government is expected to ensure that policies to improve access to housing give reasonable preference to disadvantaged and vulnerable social groups that lack their own home or live in unsuitable housing. It also expects policies and budgetary decisions to take full account of the 'special' housing needs of people with disabilities. In elaborating on these obligations, the Special Rapporteur has said states should take steps to ensure that:

- There is a clear and resourced strategy to enable people with disabilities can access adequate housing and housing related advice and support, underpinned by robust monitoring of progress<sup>69</sup>
  - Women experiencing domestic abuse in all tenures should be able to remain in her own home (and have the perpetrator removed) rather than just rely on the provision of emergency and temporary housing<sup>70</sup>
  - Guarantee migrants and asylum seekers have equivalent access to rented and owned housing<sup>71</sup>.
- At March 2019, 158,439 applicants were on a local authority or common housing register housing list<sup>66</sup>
  - Around 125,000 households contain at least one person who can't get up or down the stairs inside their own home<sup>67</sup>.
  - For 35,000 social renters who would like to move house, a lack of suitable adapted or specialised homes was the main barrier<sup>68</sup>.

<sup>66</sup> Scottish Government (2019) [Housing statistics 2019: key trends summary](#), Edinburgh: Scottish Government

<sup>67</sup> Scottish Government (2020) Scottish Household Survey, 2019 national tables.

<sup>68</sup> *ibid*

<sup>69</sup> Farha, L (2018) [The right to adequate housing of persons with disabilities](#), Geneva: UN and OHCHR

<sup>70</sup> Farha, L (2020) Guidelines for the Implementation of the Right to Adequate Housing, Geneva: UN and OHCHR

<sup>71</sup> *ibid*



## 6.3 Scotland's accessibility policy agenda

Large numbers of people continue to struggle to access social housing, with around 6 applicants for every local authority home that is let<sup>72</sup>. The lack of access to suitable housing is known to be especially problematic for people with disabilities. In the last decade, the numbers of new or adapted homes have been well below the increase in the numbers of households who contain someone who uses a wheelchair or has another form of limited mobility. The provision of homes suitable for people with sensory disabilities, people in poor mental health, people with learning difficulties and those with complex needs has also been less than hoped for.

Recognising that too many people are unable to 'choose a home or way of living that meets their needs', the Scottish Government is seeking to expand the social rented sector, including the provision on 'specialised' housing. New regulations<sup>73</sup> now allow disabled people to adjust common parts of their apartment block if a majority of other owners agree, whereas prior to February 2021, all owners had to agree<sup>74</sup>. In addition, Housing to 2040 confirms that it intends to:

- Introduce an Accessible Homes Standard for all new homes to help achieve a step change in the availability of homes suitable for older and disabled people with the need for costly adaptations
- Continue to require local authorities to set and report on targets for wheelchair and other accessible housing as detailed in revised Local Housing Strategy guidance issued in 2019
- Incorporate measures to increase accessibility and digital connectivity into the retrofit programme for social rented homes
- Streamline the housing adaptations system and improve integrated working between housing, health and social care, albeit it does not elaborate on these long-standing commitments
- Review social allocations and needs in the sector, particularly women at risk of domestic abuse, disabled people, those from minority ethnic groups and those with complex needs.

The delivery of accessible homes and homes with integrated support are both linked to the Scottish Government's health and social care integration agenda. In 2021 the Independent Review of Adult Social Care in Scotland<sup>75</sup> concluded that a lack of clear leadership and resources had hindered the delivery of genuinely integrated and person-centred services. Building on its recommendations, the Scottish Government plans to establish a National Care Service by 2026<sup>76</sup>, which will be accountable to Scottish Ministers and bring together social care, primary care, and community health into a single service. A central goal of the National Care Service will be to embed a human rights based approach to the process of assessment, support planning and resource allocation.

Housing priorities in the UK Government's 2021 National Disability Strategy<sup>77</sup> focus on England but other commitments are relevant for Scotland. These include improving access to disability benefits, improving data on the needs of disabled people, enhancing the use of digital technology in delivering services, and the setting up of a taskforce to explore the extra costs disabled people face.

This wide and diverse range of policy commitments are supportive of human rights but whether they will be sufficient to achieve big strides in the housing choices available to people from disadvantaged and vulnerable groups remains to be seen. Much will depend on the detail of the policy proposals, their resource requirements and where these resources are expected to come from. In the meantime, the absence of a comprehensive national strategic approach for ensuring people with disabilities can access a suitable home that is aligned to the wider integration agenda hinders the ability of landlords to respond effectively to the needs of disabled people.

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<sup>72</sup> Scottish Government (2019) [Housing statistics: Management of local authority housing](#), Edinburgh: Scottish Government

<sup>73</sup> Scottish Parliament (2020) [The Relevant Adjustments to Common Parts \(Disabled Persons\) \(Scotland\) Regulations 2020](#), Edinburgh, Scottish Parliament

<sup>74</sup> Scottish Government (2020) [Adapting common areas of property: guide](#), Edinburgh: Scottish Government

<sup>75</sup> Feeley, D. (2021) [Independent Review of Adult Social Care](#), Edinburgh: Scottish Government

<sup>76</sup> Scottish Government (2021) [A National Care Service for Scotland: consultation](#), Edinburgh: Scottish Government

<sup>77</sup> UK Government (2021) [National Disability Strategy](#), London: UK Government

## 6.4 Housing providers role in protecting accessibility

The Charter’s accessibility related outcomes are mainly concerned with tenant engagement and empowerment. They centre on ensuring that people have the information and advice they need to make informed choices about their housing options and that applicants have a reasonable choice over the homes they are offered (see table 6.1). That said, the Charter makes it clear that social landlords must adhere to equalities and human rights legislation in allocating housing.

**Table 6.1: Scottish Social Housing Charter outcomes on access to housing and support**

Charter outcome	Summary description
7. Housing Options	Social landlords work together to ensure that people looking for housing get information that helps them make informed choices and decisions about the range of housing options available to them
8. Housing Options	Social landlords work together to ensure that tenants and people on housing lists can review their housing options
10. Access to Social Housing	Social landlords ensure that people looking for housing find it easy to apply for the widest choice of social housing available and get the information they need on how the landlord allocates homes and on their prospects of being housed

The Scottish Social Housing Charter: April 2017, Scottish Government, 2017

### Housing allocations

Allocation policies are where competing perspectives of which households from which disadvantaged and vulnerable groups should be rehoused often surface. Social landlords set their own allocations policies, subject to compliance with Scottish housing and homeless legislation and accompanying guidance. Last modified in 2019, the legal framework allows for near universal access to social housing lists, details the factors landlords can and cannot consider when allocating social homes, and the three broad groups that social landlords must give ‘reasonable preference’ to, namely:

- People who are homeless or threatened with homelessness and who have unmet housing needs
- People living in unsatisfactory housing conditions and who have unmet housing needs and specifically those living in homes that are overcrowded or fail the Tolerable Standard
- Social housing tenants who are under-occupying.

In determining what priority to give to applicants that fall within each of these groups, [The 2019 Social Housing Allocations In Scotland: A Practice Guide](#)<sup>78</sup> confirms that landlords should respect applicants’ human rights. According to the 1998 Act, this means landlords should be able to demonstrate there are good reasons for how they have prioritised access and that this has not resulted in less priority being given to applicants based on their age, ethnicity, disability and so on<sup>79</sup>. Legislating for the ‘right to adequate housing’ should not change this, as non-discrimination is a “qualified” right.

<sup>78</sup> Scottish Government (2019) [Social housing allocations in Scotland: practice guide](#), Edinburgh: Scottish Government

<sup>79</sup> EHRC (2011) [Human rights at home - Guidance for social housing providers](#), London: EHRC

Prior to 2019, there was concern that the allocation process created barriers for some vulnerable people, including disabled people<sup>80</sup>. The impact of the revised legal framework and corresponding modifications to landlord allocation policies and practice is not yet known. However, the proposed review of social allocations noted in Housing to 2040 may consider how well these new arrangements are working and if they could be better aligned with human rights obligations. Issues that social landlords and the Scottish Government may want to review from a human rights perspective include:

- The range and transparency of information and advice available to applicants and how to make the application process easier for digitally excluded and other vulnerable households
- Greater harmonisation of the definition of 'unsatisfactory housing' to reduce variance in the treatment of different social groups by different landlords and reduce possible accusations of a postcode lottery
- Rules relating to applicants with outstanding arrears and if they are fully compliant with human rights.
- The possibility of having to limit suspensions to statutory suspensions to ensure applicants have a legal right of appeal
- The possible requirement to give applicants that live in unsuitable housing for an intolerable length of time a right to legal appeal and its implications for landlord allocation policies and appeals procedures
- Good practice in responding to an applicant's particular circumstances rather than relying on allocation criteria alone
- Clarification of the UK wide legal rules on allocating social housing to a person with no recourse to public funds (NRPF), a topic missing from the 2019 allocations guide.

### **Housing accessibility and adaptations**

Currently there is no specific human right to the provision of a home with aids or adaptations, but adaptations play a role in respecting a person's right to respect for their private and family life. Embedding the right to adequate housing will therefore most likely strengthen the rights of disabled and older people in the design, modification and adaptation of their homes to ensure they are suitable for their specific needs.

### **Case study: Edinburgh Council response to women experiencing domestic abuse**

Social Work identified that Ms X was at high risk of abuse from her ex-partners and wanted to move house. On being notified, Housing Services issued a management transfer request explaining the background circumstances and preferred areas for rehousing to its locality offices and RSLs. Two RSLs promptly responded with offers of accommodation. One property was ruled out because of its proximity to another known offender but after visiting the other property, Ms X confirmed it was suitable.

Plans were put in place to help her move. A dedicated officer arranged for the 28 days' notice to be waived, when Ms X left her previous home. The officer also worked with the Homeless Service to enable Ms X access to the removals service. The Homeless team arranged for Ms X's belongings to be held in storage at the removal company's depot for two nights. This meant that if her ex-partner or his associates saw that she was leaving her property, they wouldn't be able to follow the removal lorry to her new home.

Ms X and her daughter stayed with her mother for two nights before moving to her new home. Her belongings arrived the same day. Ms X and her daughter have remained safe and settled with no further incidents.

<sup>80</sup> EHRC (2018) [Housing and Disabled People: Scotland; s hidden crisis](#), Equalities and Human Rights Commission.

In 2018-19 social landlords completed 25,000 adaptations, of which 11,000 were delivered by RSLs. Home adaptations make someone's existing home more accessible, making it easier for them to move about their home, enabling them to continue doing things that matter to them and sustaining their wellbeing. Housing adaptations also play an important role in allowing older and disabled people to live safely and independently, reducing the risk of accidents in the home, which can cause pain, distress, injury and reducing pressures on health and social care services.

The downside is that the adaptations process can be a stressful, lengthy, inefficient and complex process. Individuals that are given little choice and control about what adaptations are made to their home and when the work is carried out can also be left feeling powerless and upset.

Part of the reason for this situation is that the national framework for delivering adaptations has long been unfit for purpose. In 2012, the Adaptations Working Group<sup>81</sup> concluded the housing adaptations system was complex, cumbersome, inherently inequitable, chronically under-funded and budget driven rather than needs driven. To compound matters, official [Guidance on The Provision of Equipment and Adaptations](#)<sup>82</sup> was last updated in 2009, prior to the transfer of responsibility for adaptations to integrated joint boards<sup>83</sup>.

The RCOT guide to [Adaptations Without Delay](#)<sup>84</sup> offers advice on how to apply a person centred and proportionate approach to the delivery of minor adaptations without the need for an occupational therapy assessment. This guide suggests that social landlords that have looked to improve tenants' experience of having their home adapted without waiting on the promised streamlining of the housing adaptations system have:

- **Adopted a preventive approach:** By informing and advising people to make them more aware of the impact of unsuitable homes on health and wellbeing, how changes to the home can improve matters, what adaptations services exist and thus encouraging people to seek advice on adaptations before a crisis occurs
- **Focused on what the person wants to achieve:** By enabling individuals and their families/carers to explore alternative housing options and have a genuine say over the solution agreed on, including the use of homely rather than medical looking equipment
- **Sustained communication:** By ensuring people have a named person who can keep individuals and their families/carers apprised of progress, reasons for any delays and, if necessary, signpost or make referrals to other services, secure translation services, hearing loops and so on
- **Promoted digital technology:** By using SMART technologies to enable people to envisage what an adaptation will look like and encouraging people to make use of SMART technologies to support independent living
- **Give people a right to appeal:** By putting in place clear and easily accessible independent appeals procedures.

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<sup>81</sup> the Adaptations Working Group (2012) [Final report - Adapting for Change](#): Edinburgh, Scottish Government

<sup>82</sup> Scottish Government (2009) [Guidance on The Provision of Equipment and Adaptations](#), Edinburgh: Scottish Government

<sup>83</sup> The Scottish Government continue to fund RSL adaptations but now state this is in addition to any IJB funding.

<sup>84</sup> Royal College of Occupational Therapists (2019) [Adaptations Without Delay](#). London: RCOT

## 6.5 Concluding remarks on accessibility

At present, the implications of the planned National Care Service for housing are unclear. Neither the Feeley Review nor the Scottish Government give any meaningful consideration to the role envisaged for housing. The risk is that the housing sector could become an after-thought as plans for the National Care Service evolve unless the housing sector moves quickly to reinforce the vital role of housing and housing related services in increasing people's independence, wellbeing and quality of life. The SFHA has made an early start by producing [Housing Scotland: Models Of Housing With Care](#)<sup>85</sup>.

This section has not looked specifically at specialist housing, such as sheltered housing. However, the vulnerability of people that are in receipt of accommodation-based or floating housing support makes adherence to human rights especially important, especially if a landlord plans to reconfigure or withdraw services. Organisations that provide housing support generally have a wealth of experience in delivering a human rights approach, as it underpins the [Health and Social Care Standards](#) that guide the Care Inspectorate's regulation of these services. Other landlords may find it useful to consult these standards as many would be equally applicable in a 'mainstream' housing setting, especially those that give meaning to the term dignity.

### Checklist for accessibility

- Which social groups are under-represented in your tenant and applicant base, and can you provide valid reasons and supporting evidence as to why any such differences persist?
- Does your organisation have a good understanding of the accessibility of its housing stock and its suitability for wheelchair users and people with other disabilities, including people with dementia, sensory difficulties, learning disabilities, autism or mental health conditions?
- How does your organisation ensure that the design and allocation of new social homes helps to meet a range of housing needs, including existing tenants that have lived in unsuitable housing for an unreasonable length of time?
- How are tenants and housing register applicants involved in reviewing and revising allocation policies and procedures?
- Is your organisation's allocation policy sufficiently flexible to offer an existing adapted property to the most suitable applicant?
- How do you engage people with different disabilities in designing, monitoring and improving your housing adaptations policies and procedures?
- What arrangements are in place to monitor customer satisfaction with the adaptations service and the impact the adaptations have had on their lives a year or so later?
- Does your organisation let a proportion of its properties on a part- or fully-furnished basis?

<sup>85</sup> SFHA (2021) [Housing Scotland: Models of housing with care and support](#), Glasgow, SFHA

## 7. Location

### 7.1 Introduction

This section considers the location of housing and how this is linked to social cohesion and the inclusion of people into local communities and the population at large.

### 7.2 Homes of an adequate quality standard: international understanding

#### General description of the location dimension

This dimension of adequate housing respects the right of people to live in homes that are situated in locations that offer a safe, clean, and sustainable environment. It means that households should not be compelled to live in homes cut off from work opportunities, education, health-care services and other facilities. It means that people, especially those moving home, should not be isolated from family and social networks. It also means that dwellings situated in dangerous areas or close to toxic waste and other forms of water or air pollution, including noise, would be inadequate.

#### State duties in relation to the location of housing

International legal standards in relation to housing<sup>86</sup> and the environment<sup>87</sup>, as well as UN guidelines on poverty<sup>88</sup> indicate that the main state obligations relating to location that are of relevance for housing, are to ensure:

- Placemaking and social cohesion are central to national and local planning for places
- Participatory planning sits at the core of a people-centred approach to the planning, design and management of both new and existing localities and other geographical areas
- The creation of mixed-use places with facilities and space where people can interact with others and lead a healthy and productive life and avoid deepening segregation
- Clear plans are in place to tackle climate change and reduce greenhouse gas emissions that detail how economies will shift away from fossil fuels over the next three decades
- Additional measures are taken to protect the rights of people that are most vulnerable to, or at particular risk from, environmental harm, considering their needs, risks and capacities.

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<sup>86</sup> CESCR [General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights](#), Geneva: UN

<sup>87</sup> UN General Assembly (2018) [Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment](#), Geneva: United Nations

<sup>88</sup> OHCHR (2004) [Principles and Guidelines for A Human Rights Approach to Poverty Reduction Strategies](#), Geneva: UN

### 7.3 Scotland’s housing and location policy agenda

In terms of location, housing mainly takes its lead from strategic or spatial planning. It has overall responsibility for setting the direction of travel for the development and use of land and buildings. Thus, spatial policies and actions have a significant impact on the environment of the places where people live, work, shop, learn, and spend their leisure time as well as travel patterns. The Scottish Government’s vision is for a sustainable and green economic recovery that simultaneously reduces inequality and improves health and wellbeing<sup>89</sup>. In support of this, the main ambitions of strategic planning<sup>90</sup> which are generally mirrored in Housing to 2040, are to:

- Accelerate progress towards achieving waste reduction and recycling, and to decarbonise manufacturing, agriculture and the way homes and other building are heated
- Create successful and sustainable places through revitalising city and town centres, promoting rural development, supporting business and employment, enabling the delivery of new homes and valuing the historic environment
- Create greener and better-connected places through promoting higher quality design, the re-use of vacant land and homes, encouraging sustainable transport and active travel and supporting digital connectivity
- Building resilient communities, by putting people and their health and wellbeing at the heart of planning and by focusing on the principle of 20 minute neighbourhoods<sup>91</sup>

Strategic planning ambitions to build resilient and sustainable communities and community planning ambitions to reduce inequalities are intended to come together at a local level to deliver better outcomes for disadvantaged communities in a way that respects economic and social human rights<sup>92</sup>.

### 7.4 Housing providers role in relation to location

#### From maintaining to shaping places

The Charter outcome for location reflects social landlords’ contribution to ensuring tenants live in well maintained estates, where they feel safe and can live without interference from others. It stresses the need to address anti-social behaviour, albeit it does not explicitly refer to excessive noise and other forms of pollution. By achieving this outcome through partnership working, social landlords can also enable tenants to enjoy their rights to private and family life and peaceful enjoyment of their home.

**Table 7.1: Scottish Social Housing Charter neighbourhood and community outcomes**

Charter outcome	Summary description
6. Estate management, anti-social behaviour, neighbour nuisance and tenancy disputes	Social landlords, working in partnership with other agencies, help to ensure that as far as reasonably possible that, tenants and other customers live in well-maintained neighbourhoods where they feel safe.

The Scottish Social Housing Charter: April 2017, Scottish Government, 2017

<sup>89</sup> Scottish Government (2021) [A Fairer, Greener Scotland: Programme for Government 2021-22](#), Edinburgh: SG

<sup>90</sup> Scottish Government (2020) [Fourth National Planning Framework: position statement](#), Edinburgh: Scottish Government.

<sup>91</sup> This commitment is directly linked to the aim of Housing 2040 to build accessible, affordable, well designed and energy-efficient with the right homes in the right places to support both urban and rural communities.

<sup>92</sup> Scottish Government (2021) [Fairer Scotland Duty: guidance for public bodies](#), Edinburgh: Scottish Government

Looking forward, the right to adequate housing may require social landlords to think harder about how they can contribute to community-led place making.

In Scotland, placemaking, because of its close links with spatial planning means, is often understood to refer to the design of new housing developments but for the UN the term has wider applicability. It is about bringing people together people to develop strong community networks and create places where people want to live and that are resilient and able to adapt to change.

Social landlords have a long-term interest in the sustainability of the areas in which they have a strong presence. Many have used their skills, expertise and resources to go beyond their core landlord role to play an active role in community-led place-making to improve the social infrastructure of local areas and strengthen community resilience.

Community controlled RSLs often act as community anchors and are engaged in improving the local facilities and advocating on behalf of their community supports to secure 'bottom-up' driven changes to public services to achieve better outcomes. Other RSLs have been involved in efforts to enhance local services. For instance, LinkLiving, a subsidiary company of Link HA, with support from Fife Council, run a weekly café session to enable people from the former mining villages in West Fife to keep connected Likewise, local housing authorities have worked to bring other local authority departments and other public, private and social agencies together to address issues that matter to local communities.

### **Case study: West Whitlawburn Housing Co-operative**

West Whitlawburn Housing Co-operative is based in Cambuslang, South Lanarkshire. Responding to local needs, it set up the Whitlawburn Community Resource Centre in 1996, with funding from the Lottery, South Lanarkshire Council and Scottish Homes.

Run by a voluntary committee of local people, the centre acts as a local hub, providing a range of social, recreational and educational activities and events, including a financial inclusion project, a food co-operative, a food bank, an out of school care project and computer classes. The Centre also provides a community café and employs several local people, bringing much needed employment to the area.

## **7.5 Concluding remarks on location**

Social landlords have employed varied approaches, reflecting different local issues and contexts. These different approaches cannot be readily categorised, but a key message is that in thinking about location, it is not just the design and quality of the physical environment that matters but actions that build a sense of belonging and involvement in a community that makes a good place to live.

### **Location checklist**

- How does your organisation engage residents in the design, delivery and monitoring of its actions to manage estates, address anti-social, racist or abusive behaviour and promote social cohesion and tolerance for others?
- How does your organisation prevent people becoming 'disconnected' from their community and social networks if they are re-housed or decanted to allow their home to be improved?
- What does your organisation do to ensure that tenants and other service users have access to services that contribute to meeting their wider needs and foster vibrant communities?
- How does your organisation gather and use community insights to understand and improve the impact of its place-making activities?
- Has your organisation invested in multi-agency partnerships that deliver action-orientated and innovative responses to insights gained from working with local communities?
- How does your organisation enable local people to take on leadership roles to drive local place-making in their communities?



## 8. Cultural adequacy

### 8.1 Introduction

This section considers cultural adequacy and the requirement for the housing sector not to suppress the expression of cultural identity by failing to recognise the diversity of housing needs.

### 8.2 Cultural adequacy: international understanding

#### General description of cultural adequacy

From a human rights perspective, culture encompasses the distinctive traditions, values, language, lifestyle, artistic, religious, spiritual, intellectual, recreational and sporting heritage of different social groups<sup>93</sup>. Promotion of cultural diversity and enabling people to participate in the cultural life of their community is therefore inseparable from respect for human dignity and the enrichment of society<sup>94</sup>.

Cultural adequacy applies to all social groups but is often narrowly interpreted as protecting the rights of distinctive or marginalized groups. Discussion on culturally adequate housing throughout Europe, for instance, has mainly focused on the lack of adequate permanent, transit and stopping sites (public and private) that threaten the human rights and traditional way of life Gypsy/Travellers. This is an issue that requires urgent redress, as cultural adequacy has wider applicability.

As the CESCR<sup>95</sup> has observed, it means that as far as possible dwellings are constructed and designed (and by extension how they are allocated and managed) in a manner that respects cultural identity. For example, it may be necessary to allow for cultural observances, such as space for use as an altar, the provision of dual sinks, or the provision of larger homes for multi-generation households. Housing layouts may also have to avoid situating a toilet near a kitchen or front door.

Cultural adequacy encompasses the sustainable management of the built heritage and conservation of historically important buildings, such as ensuring the renovation and maintenance of tenemental properties by community controlled and other RSLs are overseen or carried out or by constructing new homes in a way that reflects the cultural heritage of such places.

Cultural adequacy also encompasses the space surrounding homes. Outdoor space plays an important role in promoting cultural life<sup>96</sup>. This includes space that provides safe passage for pedestrians and cyclists plus the provision of open, green and accessible space to support different forms of recreational, sporting and other cultural activities as well as social interaction by (and between) different social groups. The importance of open and green space has been reiterated in the UN Sustainable Development Goals, which suggested that at least 15- 20 percent of land in built up urban areas should be allocated to public open space and a further 30-35 percent to streets<sup>97</sup>. The UN-Habitat has also clarified that open spaces should be of good quality, accessible and enjoyable for all for free<sup>98</sup>.

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<sup>93</sup> OHCHR (2001) [Universal Declaration on Cultural Diversity](#), Geneva: United Nations, OHCHR

<sup>94</sup> CESCR (2009) [General comment No. 21: Right of everyone to take part in cultural life](#), Geneva: United Nations and OHCHR

<sup>95</sup> CESCR (1991) [General Comment 4, The right to adequate housing](#), Geneva: United Nations and OHCHR

<sup>96</sup> Bennoune, K (2019) [Report of the Special Rapporteur in the field of cultural rights](#), Geneva: United Nations and OHCHR

<sup>97</sup> UN Department of Economic and Social Affairs (2018) [The Sustainable Development Goals Report 2018](#), New York, UN

<sup>98</sup> UN-Habitat (2015) [Global Public Space Toolkit: From Global Principles to Local Policies and Practice](#), Kenya: UN Human Settlements Programme.

## State duties in relation to cultural adequacy

The CESCR general comments and the reports by the Special Rapporteur on cultural rights<sup>99</sup> indicate that in terms of cultural adequacy and housing, every state is obligated to ensure:

- Housing is planned, constructed or modernised in a way that conserves cultural life and identity
- There is adequate provision of shared, safe and accessible open and free spaces for the enjoyment of cultural rights, including parks, recreational green areas and public playgrounds
- Any limitations placed on the use of green spaces must be proportionate and should not uniformly prohibit children or adolescents from engaging in age-appropriate sport, leisure and other recreational activities
- The cultural heritage in all its forms is protected, including the care, preservation and restoration of historical buildings, monuments and works of art
- Communities have a strong voice in the planning of housing solutions, including traveller sites, that are suitable for their cultural identity, lifestyle and socio-economic needs
- Cultural adequacy is not used to justify the provision of housing that is inadequate in terms of security of tenure, quality, accessibility, affordability or location
- People are protected from having to live in housing that does not meet the norms of their community or would be considered unacceptable or degrading for the public at large.

## 8.3 Scotland's housing and location policy agenda

Since publication of its first sustainable development strategy in 2005<sup>100</sup>, the Scottish Government has been evolving its approach to the provision of open and green space plus blue space (rivers, lochs, etc). This has included planning advice on open space<sup>101</sup> to assist local authorities to deliver, manage and maintain open spaces in parallel with new development.

A lack of culturally adequate housing related provision for Gypsy/Travellers remains a major issue across the UK and much of Europe.

In Scotland, much of the responsibility for ensuring the provision of accommodation suitable for Gypsy/Travellers has been devolved to local authorities. In recent years the Scottish Government and COSLA has sought to strengthen the implementation of these obligations. Guidance<sup>102</sup> issued in 2015 specified minimum standards for public sites. This was followed in 2017 with guidance<sup>103</sup> on managing unauthorised camping by Gypsy/Travellers and in 2019 by the joint COSLA and the Scottish Government 'Improving the lives of Gypsy/Travellers 2019 -21' action plan<sup>104</sup>, which will now operate until October 2022.

### Case Study: Aberdeenshire Gypsy/ Travellers provision

Aberdeenshire Council opened a second Gypsy/Traveller site in 2018. The site is open throughout the year and is managed by a Liaison Officer. It consists of 10 pitches and office accommodation. Each pitch has an electric point and a portable toilet. Residents also have access to water.

The council drew up an action plan that helped to ensure the local community were engaged throughout the planning and development of the site to promote good relations and counter negative stereotypes.

Following feedback from Gypsy/Travellers, the council is making further improvements at the site, including the provision of Wi-Fi, height restricted safety/security barrier, an additional water tap, security lighting and play equipment.

<sup>99</sup> See CESCR (2009), CESCR (1991) and Bennoune (2019) *ibid*

<sup>100</sup> Scottish Executive (2005) *Choosing Our Future: Scotland's Sustainable Development Strategy*, Edinburgh, SE.

<sup>101</sup> Scottish Government (2008) [Planning Advice Note 65: Planning and Open Space](#), Edinburgh: Scottish Government

<sup>102</sup> Scottish Government (2015) [Improving Gypsy/Traveller sites: guidance on minimum sites standards and site tenants' core rights and responsibilities](#), Edinburgh: Scottish Government

<sup>103</sup> Scottish Government (2017) [Managing unauthorized camping by Gypsy/Travellers in Scotland: guidance for local authorities](#), Edinburgh:

<sup>104</sup> Scottish Government and COSLA (2019) ['Improving the lives of Gypsy/Travellers 2019 -21'](#)

Looking ahead, the fourth National Planning Framework Position Statement<sup>105</sup> and Housing to 2040<sup>106</sup> contain various proposals that should help to progress cultural adequacy, albeit few specifically address or promote cultural adequacy. Across the two documents there are commitments to:

- Improve access to good quality green and open space within 20-minute neighbourhoods, particularly for those without access to gardens at home or green space nearby
- Ensure green space and play is embedded in the way communities are planned for
- Ensure all homes offer access to quality green space, services and public transport links, as well as being digitally connected
- Value the historic environment as part of creating successful and sustainable places
- Improve the quality of homes delivered through the AHSP programme, including provision for outdoor space. Consistent with this, the proposed New Housing Standard will apparently help to ensure “children have the space indoors and outdoors that they need to thrive
- £20 million to be made available during 2021-26 to help fund the upgrading of Gypsy/Traveller’s existing sites and the building of new sites
- Develop a Site Design Guide in conjunction with local authorities and members of the Gypsy/Traveller community to help ensure upgraded or new Gypsy/Traveller sites reflect the Housing to 2040 ambitions in relation to energy efficiency, carbon-zero and accessibility
- Explore the barriers people from ethnic minorities face in accessing social housing and ensuring that minority ethnic voices are heard in work to develop a new Rented Sector Strategy
- Support for the delivery of homes (i.e., larger homes) suitable for minority ethnic groups and further consideration of their needs as part of the review and streamlining of the housing adaptations system.

## 8.4 Housing providers role in relation to cultural adequacy

The Charter requires social landlords to ensure any Gypsy/Traveller sites they manage meet the 2015 minimum site standards. It also confirms that the incorporation of these standards into the Charter has given them the same legal status as the SHQS. It also stresses that all other outcomes in the Charter also apply to Gypsy/Travellers (see table 8.1).

**Table 8.1: Scottish Social Housing Charter cultural adequacy outcomes**

Charter outcome	Summary description
16. Gypsy Travellers	Local Councils and social landlords with responsibility for managing sites for Gypsy/Travellers should manage the sites so that sites are well maintained and managed, and meet the minimum site standards set in Scottish Government Guidance.

The Scottish Social Housing Charter: April 2017, Scottish Government, 2017

<sup>105</sup> Scottish Government (2020) [Fourth National Planning Framework: position statement](#), Edinburgh: Scottish Government

<sup>106</sup> Scottish Government (2021) [Housing to 2040](#), Edinburgh: Scottish Government

The Charter is silent on the issue of the cultural adequacy of the design and construction of homes and their surrounds. That said, many social landlords will be familiar with [The Place Standard](#) developed by Scottish Government, NHS Health Scotland and Architecture and Design Scotland. This is a simple tool based around 14 questions about the physical and social environment of a place and converts responses into a simple graphic which plots the assets of a place, such as the buildings, streets, public spaces and natural spaces that make up a place.

To enhance the value of the Place Standard for housing providers, a 'design' version of the tool is to be developed. This is intended to support social landlords with the design, planning and delivery of new housing developments<sup>107</sup>.

Another tool is the Keep Scotland Beautiful [Local Environmental Quality Audit](#), which Clydebank HA and other social landlords have engaged with. This involves an independent assessment of the cleanliness and environmental quality of common areas and surrounding space and how well a social landlord is performing in delivering clean, green and sustainable environments for tenants and the wider community.

A [NatureScot](#) report<sup>108</sup> outlines how green infrastructure can help to develop high quality, successful places that can deliver a range of positive social and environmental objectives for tenants and other local residents. Its [website](#) also contains a range of green infrastructure projects. Greenspace has also produced [A Good Practice Guide for Housing Associations](#)<sup>109</sup>. Although written for Welsh RSLs, it provides a good summary of existing knowledge around green infrastructure and useful case studies.

The Scottish Government will also shortly launch an 'Our Place' website. This will provide information, tools and resources to help support the development of places and services to support the development of places, improve health and wellbeing and protect local environments<sup>110</sup>.

### Case Study: Govanhill HA Community Garden

Following a feasibility study, Govanhill HA opened a community garden on former derelict land in 2015. Initially developed with funding from the Scottish Government Big Lottery Fund, the Grow Wild campaign and Glasgow City Council, the well-loved greenspace is tended mainly by local children and residents.

The garden includes raised flowerbeds and a growing tunnel, which are designed to attract birds, butterflies and bees. It also includes a quiet reflection area. The garden has provided space where local people can relax and where primary schools and voluntary organisations can use the garden to learn about plants, gardening and wildlife.

<sup>107</sup> Scottish Government et al (2017) [Place Standard Tool Strategic Plan 2020-2023](#), Edinburgh, Scottish Government

<sup>108</sup> NatureScot (2018) [Maximizing the benefits of green infrastructure in social housing](#), Inverness: SNH

<sup>109</sup> Greenspace (2020) [Greenspace and Wellbeing - A Good Practice Guide for Housing Associations](#),

<sup>110</sup> Scottish Government (2021) [A Fairer, Greener Scotland: Programme for Government 2021-22](#), Edinburgh: Scottish Government

## 8.5 Concluding remarks on cultural adequacy

Moving forward, the Scottish Government will want to work with partners to explore how cultural adequacy could be better understood and applied from the perspective of different social groups and how green infrastructure can support the cultural life of people of all ages in different settings.

For now, social landlords may wish to take stock of their current position in terms of respecting cultural identity and promoting diversity, equality and inclusion and reviewing what more could be done to uphold the cultural life of different protected groups. The checklist below has been drawn up with this in mind.

### Cultural adequacy checklist

- How has your organisation and its leadership sought to embed a culture that embraces equality and inclusiveness and always fosters respect for cultural identity and diversity?
- How well do your organisation's community engagement activities ensure a diverse range of voices, including people from different faith groups and LGBT+ communities, are heard?
- Does your organisation work to forge links between different local communities to foster mutual learning about housing matters of importance to different social groups?
- Do arrangements for engaging tenants and other service users make provision for people from different communities that may be afraid to attend meetings and root out discrimination?
- Has your organisation audited your own housing stock to assess how it meets the specific housing requirements of different communities?
- Are the cultural needs of different local social groups set out in design briefs for new housing developments?
- Does your organisation's human resource policies and practice encourage recruitment from a diverse range of social groups?
- Has your organisation invested in diversity, un-conscious bias and inter-sectional training for staff and board/elected members?
- Is your organisation's commitment to diversity highly visible to all, so that people feel safe to approach or come out to your staff?
- What contribution does your organisation make to promote and deliver high quality open and green space and associated green infrastructure?
- Do your estates contain green spaces that promote informal play and kickabouts that make it easier for children and adolescents to play outside where it's safe to do so?

## 9. Moving forward together

### 9.1 Introduction

A year into the Coronavirus pandemic, which highlighted the impact of deepening inequalities in the housing system, the National Taskforce for Human Rights Leadership published its report. It sets out recommendations for developing a statutory framework that will cover the full range of human rights, including the right to adequate housing. The Taskforce's remit did not extend to exploring how these rights should be progressed. Priorities for promoting and fulfilling the right to adequate housing will therefore depend on what the Scottish Government chooses to do.

This briefing paper represents a first effort to review the connection between the right to adequate housing and Scotland's evolving housing agenda and the role of housing providers. The incorporation of the right to adequate housing will not by itself necessitate any radical shifts in the commitments set out in Housing to 2040. However, our review provoked numerous questions that will ultimately have to be addressed by the Scottish Government and will most likely shape the way the Housing to 2040 commitments are progressed. This final section therefore sketches out key issues that we believe the Scottish Government will have to contend with going forward. It then concludes with key messages for social landlords and CIH Scotland.

### 9.2 Issues for the Scottish Government to consider

#### Minimum core obligations

A key issue is what minimum core obligations should be put in place to guarantee minimum levels of adequate housing for all households. The Taskforce correctly called for such obligations to be developed through a participatory process involving rights-holders and to take account of any international law obligations. It also implied they should be set regardless of resource constraints, but in practice establishing a legally enforceable and quantifiable floor for adequate housing will be inseparable from broader policy choices and resource allocation decisions.

One risk in establishing minimum core obligations is that aspects of adequate housing that are not covered by core obligations will become less of a priority, thereby holding back progress towards fulfilling the right to adequate housing. To counter this, the Taskforce said that core obligations should be accompanied by a duty to progressively realise social, economic, cultural and environmental rights. However, such a move would not prevent a share of finite resources available to progress adequate housing being deflected to set up, regulate and monitor minimum core obligations. The Government will need to consider how to support landlords to look beyond the minimum core.

Depending on how minimum core is defined, many of the possible core obligations for adequate housing would require lines to be drawn. For example, deciding whether housing costs fall within the boundaries of being affordable would require a set of legal norms to be set, backed by monitoring and enforcement mechanisms. Setting these norms would require decisions to be made about whether they should extend to homeowners, whether they should allow for households of differing composition, and whether they should allow for variations in housing costs across the country. The impact of social security housing allowances, which the Scottish Government has no control over, would need to be factored in. In addition, decisions would have to be made about how the cost of fulfilling, monitoring and policing such an obligation would be paid for and by whom, taking into account the knock-on effects for other policy priorities, such as the ability of housing providers to invest in new developments or energy efficiency measures.

Scottish law already contains some obligations that resemble those related to minimum core obligations for adequate housing, particularly in relation to homelessness, evictions and the physical quality of homes. It also prohibits discrimination in the allocation of homes and various mechanisms of redress exist. Moreover, reliance on individuals taking legal action to address inequalities and social exclusion has proved to be inadequate<sup>111</sup>. Considering this, it is suggested the Scottish Government should:

- Consider what the impact would be of any expansion of minimum core obligations and where they are in place, ensure that they are practical standards that are easy to adjudicate
- Consider complementing existing legally enforceable core minimum obligations by embedding human rights outcomes for adequate housing within the Scottish Social Housing Charter and Social Landlord Assurance Statements. In effect this would impose positive obligations on social landlords and guide their efforts to progress adequate housing.

### **Reframing discussion around the relevance of human rights**

Human rights, and more specifically social, economic and cultural rights are often presented in a way that they are principally about protecting the rights and meeting the needs of the poorest, most disadvantaged and vulnerable households in society. It is correct that human rights are used to improve the life chances of the most disadvantaged be it those who are rough sleeping, gypsy/ travellers or those with acute housing support needs. However human rights laws and standards have the potential to benefit everyone in the country. The large number of households that lack adequate housing in Scotland<sup>112</sup> illustrates the need for a human rights approach to housing for the population at large, regardless of their background.

At the heart of the matter is that while the Scottish Government and public authorities have human rights obligations to protect vulnerable and disadvantaged individuals and communities, they also have obligations to apply human rights principles in relation to all the policies and services they are responsible for. In other words, people should be at the centre of housing policy and human rights should be integral to efforts to drive up standards in the delivery of housing services. This suggests there is a need to reframe how human rights are understood if it is to provide positive underpinning for Scottish housing policy and practice going forward.

CIH Scotland therefore calls on the Scottish Government to commit to:

- Developing a shared understanding of the right to adequate housing and associated obligations for different organisations for all through extensive dialogue with social landlords, other housing providers, tenants and the wider public
- Lead by example by explicitly using a pro-active human rights approach to steer the drafting and communication of all new housing related laws, strategies and policies, including the rented strategy for Scotland.

### **Clarification of which bodies have which duties**

As discussed in section 2, international human rights law uses the term public body to refer to organisations that deliver public services or functions. The incorporation of the full range of human rights will have implications for the range of negative and positive obligations placed on housing providers, including private landlords and developers. It will also require the Scottish Government to consider and conclude whether there are any valid reasons why households that rent their home from a social or private landlord do not enjoy equal protection under the law.

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<sup>111</sup> O’Cinneide, C. (2004) [Taking equal opportunities seriously: the extension of positive duties to promote equality](#), London, Equally Ours.

<sup>112</sup> Young, G. (2021) [The Right To Adequate Housing: Are We Focusing On What Matters?](#), Glasgow: CaCHE and ALACHO

More immediately, there remains confusion about which private and third sector organisations constitute public authorities from a human rights perspective or the purpose of legal liability under the Human Rights Act. For instance, it is not wholly clear if an RSL subsidiary that owns and manage Mid-Market Rented properties provides a public function and is therefore subject to the human rights duties of its parent body. This is the case for other RSL subsidiaries and voluntary organisations that provide housing and community services.

This suggests the Scottish Government should:

- Ensure that the new human rights bill clarifies what obligations housing providers, including both social and private landlords, have in relation to the rights guaranteed under such a bill
- In the longer term, produce guidance for social and private landlords that set out their negative obligations to not interfere with someone's human rights, their positive obligations to progress the right to adequate housing and other human rights and offers advice on how to balance competing rights.

### **A matter of scrutiny**

A core requirement of international human rights is a need to monitor, review and communicate progress in relation to addressing human rights issues and this should be evidence based and informed by independent scrutiny of plans, programmes, resources and progress. However, outside the field of homelessness, the availability of data makes it difficult to hold the government to account for delivery of the right to adequate housing. This includes data gaps in relation to the affordability of housing costs, evictions (especially in the private rented sector), and the accessibility of housing for disabled people and other vulnerable and disadvantaged groups.

It would be possible to make progress on several of these measures without major investment, although in some instances it would require social and private housing providers to commit to supply additional data. As such, the Scottish Government should work with housing providers and other stakeholders to prepare an action plan to secure more and better official data so that policy and related budgetary decisions are transparent and open to scrutiny.

### **Taking action to resolve current policy tensions**

The actions and resources required to progress the right to adequate housing will clearly depend on how adequate housing is defined and interpreted and how the Scottish Government decide to progress and implement its various Housing to 2040 commitments. This includes its commitment to develop a more coherent understanding of how the housing system is failing to provide adequate and affordable homes for a growing share of people living in Scotland. More immediately, however, the study identified several current housing policy areas that would warrant re-appraisal from a human right perspective and which the Scottish Government might be able to progress in the shorter term.

Perhaps the biggest single issue is the unplanned growth of the private rented sector over the last 20 years. Private renting can offer a flexible and dynamic means to find a home and caters for a diverse range of demand groups, many of whom are happy to rent privately<sup>113</sup>. However, its largely unregulated growth prior to 2016, may have been unintentionally discriminatory from a human rights perspective. This is due to the propensity for younger households and those from minority ethnic backgrounds to reside in the sector and to be disproportionately exposed to affordability issues and relatively low physical and management standards<sup>114</sup>. One of reasons why these issues have persisted is that local authorities have struggled to use their regulatory and enforcement powers effectively, partly linked to a lack of resources, skills and capacity to fulfil these duties<sup>115</sup>.

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<sup>113</sup> Scottish Government (2020) [Scottish Household Survey, 2019](#), Edinburgh

<sup>114</sup> Soaita, A., Munro, M., and McKee, K. (2020) [Private renters' housing experiences in lightly regulated markets](#) *Review of qualitative research*, Glasgow: CaCHE

<sup>115</sup> Harris, J., Cowan, D., and Marsh, A (2020) [Improving compliance with private rented sector legislation: Local authority regulation and enforcement](#), Glasgow: CaCHE



Scottish Government proposals to create a new private rented sector housing regulator to raise standards and enforce tenants' rights with additional penalties and compensation for illegal evictions points to a way forward. However, we believe these proposals would be strengthened by the Scottish Government exploring their human rights implications in conjunction with the SHRC and the EHRC.

Other policy issues that would warrant further dialogue with the SHRC and EHRC include:

- The provision of funding for the development of specially designed new homes and adaptations for older and disabled people, which continues to lack real policy coherency
- Updating the 2019 social housing allocations guidance to provide social landlords with a clear steer on how their allocations policies and practice should respect their human rights duties
- The production of good practice guidance, principally for local authorities, on engaging different social groups (especially the protected equalities groups) on housing related matters and the use of this evidence to inform their housing need and demand assessments, their local housing strategies and their landlord policies and practice
- Whether the ability to convert Scottish Secure Tenancy to Short Scottish Secure Tenancy in cases when an ASBO is served or where a new tenant was accused of previous antisocial behaviour is wholly human rights compliant or would be a derogation of a person's rights
- Whether the Scottish Secure Tenancy agreement clause "you, someone residing in your house, or anyone visiting it, has been convicted of using the house or allowing it to be used for illegal or immoral purposes or a criminal offence, punishable by imprisonment, which was committed in the house or the locality" is compliant with international human rights and whether it is appropriate to use tenancy conditions to regulate moral behaviour.

### 9.3 Key message for housing providers

It is hoped that the report will provide a useful initial framework for social landlords who wish to better align their business priorities and day-to day activities with a rights-based and person-centred way of working and continue to progress the right to adequate housing.

At the strategic or corporate level, key takeaways from the previous sections are that:

- A human rights-sensitive approach to working has the potential to assist social and private landlords to improve performance and tenant satisfaction, but it requires strong leadership from the top
- Landlords will have to exercise extra vigilance in monitoring human rights risks and outcomes once the human rights legislation is put in place. Human Rights Budgeting may assist in the process
- Landlords and their representative bodies should continue to work with the Scottish Government to influence how adequate housing should be interpreted in Scotland and how it can be progressed in a way that tenants, including those from vulnerable or disadvantaged social groups, are not left behind.

In terms of walking the talk, landlords looking to embed a human rights approach should:

- Ensure committees, boards and staff know what a human rights approach involves, how this should inform their work and how they interact with tenants and other service users
- Show how tenants and other service users are gaining a stronger voice, how this is impacting on their perceptions of feeling valued, respected and empowered as well as service delivery
- Seek to limit human rights risks throughout their operations be this building, managing and maintaining homes or managing relationships with local communities and suppliers
- Tell tenants, other service users and external stakeholders how their views and feedback are informing policies and practice and the resulting impact on service delivery.

More generally, the increased use of technology to communicate and deliver services in the wake of the COVID-19 crisis has brought benefits<sup>116</sup>. However, it has reinforced digital exclusion and increased the risks to tenants' human right to privacy. Housing providers will therefore want to explore how they can address digital poverty and whether their own procedures and those of their partners and suppliers comply with data protection regulations and the right to privacy.

#### **9.4 Key recommendations for CIH Scotland**

Finally, it is recommended that CIH Scotland should seek to:

- Work with external stakeholders in housing, human rights and academia to develop educational resources on human rights and adequate housing which can be accessed by housing providers and planning professionals
- Work with representatives from the planning sector to prepare issue guidance for housing providers on good practice in promoting well designed places and cultural adequacy
- Use human rights to re-energise discussion around the purpose and role of housing management and how its delivery can bring benefits to tenants, other service users, staff and housing providers themselves.

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<sup>116</sup> Housing LIN (2021) [The TECH Pandemic Report: How has COVID-19 changed the perception of technology in specialist housing?](#)

# Appendix 1: Current UK human rights law and housing

## Introduction

The Human Rights Act was enacted in 1998 and came into force in October 2000. It gives further effect in United Kingdom law to civil and political human rights and freedoms set out in the European Convention on Human Rights (ECHR). This appendix provides further details about the Human Rights Act 1998 and its applicability to the housing sector.

## Overview of civil and political rights

The 1998 Act set out minimum standards for state and other public authorities to adhere to in their treatment of individuals and made it unlawful for them to act in a way which infringed upon the rights and freedoms of individuals set out in the ECHR. It also allowed individuals who believe their rights have been infringed to seek redress in the UK courts. In addition, legislation passed by the Scottish Parliament must comply with human rights and may be invalidated by a court if it does not.

Human rights are unalienable and cannot be taken away from anybody. However, most rights can be restricted in some way. Consistent with international law, the 1998 Act differentiates between:

- Absolute rights, such as the right not to be tortured or enslaved, which no state bodies, other public authorities, and private persons are permitted to interfere with at any time
- Limited rights that can only be restricted by the state in prescribed circumstances, such as when a person's liberty is curtailed following criminal conviction
- Qualified rights, which can be restricted by a state if it can demonstrate it has valid and legal reasons to do so and the action taken is proportionate. An example would be measures imposed during the COVID-19 crisis to protect public health.

Most rights, including most social rights such as the right to adequate housing, are qualified rights.

The 1998 Act sought to promote a culture of respect for the human rights of individuals by placing obligations on the state and other public authorities. These comprise of negative obligations, which require the state and others to refrain from acting in such a way that violates human rights and positive obligations that require the state and other public authorities to take action to protect against human rights violations and take steps to fulfil human rights.

As explained in the main report, positive obligations are core to the right to adequate housing and other social rights, even although such rights can rarely be fully realised swiftly.

## Connection between civil and political rights and the right to adequate housing

The 1998 HRA does not directly protect the right to adequate housing. However, the UN Committee on Economic, Social and Cultural Rights (CESCR) has said that other domestic rights should be interpreted in a way that can protect it. This interpretation has also been confirmed by the EHRC in terms of the 1998 Act. The articles in the 1998 Act most commonly referred to in connection with adequate housing are set out in table A1.1 Judgements by the UK Supreme Court suggest Article 8 (and the associated principle of proportionality) may be used as a possible defence against possession cases brought by social landlords but not private landlords. However, this decision may be open to challenge as it is potentially incompatible with the ECHR.

**Table A1.1: HRA 1998 Act civil and political rights of relevance to adequate housing**

Article	Context	Note
Article 1 protocol 1 (qualified)	Right to peaceful enjoyment of property and possessions	Property refers to a home, possessions, and financial assets. A public body can only restrict your peaceful enjoyment of a property if it is lawful and in the public interest to do so. For example, it can compulsorily purchase a home to enable a road or school to proceed.
Article 2	The Right to life	This prohibits the ending of a life and requires public authorities to take action to protect a person if their life is in danger.  THE EHRC found that the authorities breached this right in the case of the Grenfell Fire Tragedy.
Article 3 (absolute)	The right not to be tortured or subject to inhumane or degrading treatment	This prohibits ill-treatment that causes severe mental or physical suffering, is grossly humiliating or undignified. Examples include a neglect by a local authority, social landlord, care home or hospital.  The Home Office breached this right when it failed to provide accommodation and support for asylum seekers on the day they arrived in the UK.  Local authorities may be in breach of this article if they fail to help, and this leads to homelessness and destitution. Social landlords may also be in breach if they evict someone into homelessness.
Article 6 (absolute)	The right to a fair and public trial	Everyone has a right to a hearing that is fair, public, and decided by an impartial and independent court or tribunal in relation to both criminal and civil matters. This includes tenants facing eviction.  Tenants evicted without a court order are entitled to legal redress and damages. The Legal Service Agency (1) note that this right is rarely enforced, suggesting the right is not poorly protected in Scotland.
Article 8 (qualified)	The right to respect for private and family life, home and correspondence	This is a right to respect a person's home and their right to live in it without intrusion and interference and includes protection from anti-social and threatening behaviour and from different kinds of pollution. It also gives people the right to live their life in the way that they choose (e.g., appearance, sexual orientation etc), for their personal data be kept private and not to be separated from family members.  This may apply if someone's home is so inadequate that it interferes with private and family life. It may also apply in cases where eviction would not be considered a proportionate action.
Article 14 (limited)	Rights and freedoms are secured without discrimination.	This grants everyone rights and freedoms within the Act without discrimination from the state or any public authority. This means individuals cannot be treated less favourably than someone else in a similar situation due to their personal circumstances such as age, race, gender, politics, or trade union membership.  The 1998 Act notes there are situations that may justify a difference in treatment, but these are not spelt out.

Source Derived from EHRC (2011) [Human Rights at Home: Guide for social housing providers](#)

Note

1 See <https://www.scottishhousingnews.com/article/legal-services-agency-urgent-reform-is-needed-to-the-law-of-damages-for-unlawful-eviction>

## Public Authorities

Only organisations deemed to be “public authorities” under the Human Rights Act 1998 are held accountable for any infringements of human rights. The 1998 Act differentiates between ‘core’ public (or state) bodies such as Local Government and Police Scotland and ‘hybrid’ public authorities that are only a public authority because they perform a public function. Hybrid bodies may be social or private enterprises. As the Lord Chancellor noted during parliamentary debates, “doctors in general practice would be public authorities in terms of their National Health Service functions, but not in relation to their private patients”. (Hansard, HL Debates, 24 November 1997, col 811).

The UK parliament left the definition of ‘functions of a public nature’ largely undefined in the 1998 Human Rights Act to encourage a broad approach by the courts, partly to allow for the growth of the contracting-out of public services. However, this decision has proved to be a source of controversy.

This controversy stems from the fact that Courts have applied what many consider to be narrow and restrictive interpretations. This was highlighted by the House of Lords and House of Commons Joint Committee on Human Rights, which investigated the matter as long ago as 2003-4. It found that courts were failing to give effect to the intention of Parliament and that consequently there were “unjustifiable discrepancies in the protection afforded under the Act to different people”. In other words, people that rely on public services delivered by private providers have little or no potential redress if a person’s rights are violated.

Case law and test cases have confirmed that RSLs, at least in terms of the social landlord role, are regarded as a public authority under the 1998 Act. This is because they manage and allocate housing stock, which is a function of public nature. However, the picture in relation to other social and private enterprises that deliver housing related services, including forms of housing support is more blurred.

As people rarely have a choice whether a public service they need is provided directly by the public sector or by a private party, work to establish a new human rights framework for Scotland has renewed debates about how to ensure laws and regulations respond effectively to the reality of private sector involvement in public life and avoid a two-tier system of rights protection<sup>117</sup>. This led the Taskforce to recommend that the Scottish Government “further consider the best approach to ensure there is clarity and certainty that relevant private actors carrying out public functions, and functions connected to the delivery of rights within the framework, are within the scope of the obligations in the framework”.

### Factors that suggest an organisation may be a public authority

- The function performed under contract or other agreement with a public body
- The role takes the place of a local authority service
- The state regulates and inspects its performance
- It is subject to judicial review or is publicly accountable for its actions
- It has charitable objectives
- It has enhanced statutory powers, particularly where such powers are enforceable against the public
- Its rights and responsibilities are found in public law rather than private law
- Parliament would not have

<sup>117</sup> Deeming E (2020) [Signed away? Privatisation and human rights](#), Edinburgh, Law Society of Scotland.

## Appendix 2: List of abbreviations and glossary

### Abbreviations

1998 Act	The Human Rights Act, 1998
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
HABITAT III	United Nations Conference on Housing and Sustainable Urban Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBT	An acronym for lesbian, gay, bisexual, and transgender people.
Taskforce	National Taskforce for Human Rights Leadership
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN-HABITAT	United Nations Human Settlements Programme

### Glossary

Term	Definition
Accountability	A process which requires government to show, explain and justify how it has fulfilled its obligations to the people.
Adoption	Process by which a state agrees to international laws, treaties, and conventions. It is commonly used to refer to the initial stage at which a treaty etc is accepted. To be effective following adoption, a treaty usually must be ratified by state legislature.
Advocacy	Term used in human rights to champion or publicly support or suggest an idea, a development or way of doing something.
Annual Assurance Statements	Social landlords must submit an Annual Assurance Statement to the Scottish Housing Regulator each year providing assurance that their organisation complies with the relevant requirements of the Regulatory Framework, which includes reference to human rights.
Assurance process	The methods and processes employed by landlords and other organisations to appraise their performance or behaviour in relation to human rights and other things they are responsible for.
Bench Marking	A system used by landlords to compare the cost and how a service is provided with similar organisations, with a view to adopting best practice.
Best Value	A system that local authorities use to make sure the services they provide deliver continually improving performance, alongside an appropriate balance between quality and cost.
Capacity Building	The process where tenants' organisations, community groups, and individuals are supported to develop the skills they need to influence decisions taken by their landlord. This is usually achieved through a mix of training, development, and support.
Civil rights	Also known as civil liberties, this term refers to a category of rights and freedoms that protect individuals from unwarranted government action and ensure their ability to participate in the civil life of the state without discrimination or repression.

Term	Definition
Codification	The process of formalizing law or rights into written instruments.
Convention	This is a binding agreement between states; used synonymously with treaty and covenant. It is stronger than a declaration as it is legally binding for governments that have ratified it.
Co-production	Usually involves individuals who use services and organisations that deliver service coming together on an equal footing to review issues and to find a shared solution.
Cultural rights	This refers to a person's right to preserve their cultural identity and development. It extends across a broad set of shared attitudes, values, goals, and practices that are often based on historical traditions shared by an institution, organization, or group.
Data Protection Act 2018	The Data Protection Act 2018 is the UK's implementation of the General Data Protection Regulation (GDPR). The Act controls how personal information is used by organisations, businesses, or the government.
Declarations	A document stating agreed upon principles and standards, but which is not typically legally binding. The UN General Assembly often issues influential but legally non-binding declarations.
Derogation:	A declaration from a state that allows it to suspend or restrict certain rights in specific circumstances, such as times of war. Some rights can never be derogated, such as the right to be free from torture.
Discrimination	Term used by the UN to refer to any distinction, exclusion or restriction or preference, which is based on any ground such as race, culture, ethnic origin, nationality, sexual orientation, religion, physical handicap, or other characteristics not relevant to the issue in question.
Duty holder (bearer)	Organizations who have a particular obligation or responsibility to respect promote and realize human rights and to abstain from human rights violations. The term is most used to refer to state bodies such as national and local government. However, non-state organisations may also be duty-holders.
Empowerment	A term that describes an aim to allow tenants and other community groups to influence decisions that affect their communities.
The Equality Act 2010	The Act details the legal framework to protect the rights of individuals from unfair treatment and seeks to promote equality of opportunity for all. It prohibits discrimination based on a number of protected characteristics. These are sex; age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; and sexual orientation.
Equality Impact Assessment (EQIA)	An Equality Impact Assessment (EQIA) is an exercise intended to ensure the needs of people (and especially those in protected groups) are considered during the development and implementation of a new policy or service or when a change is made to a current policy or service.
European Committee of Social Rights	The body responsible for monitoring EU member compliance with the European Social Charter. It is made up of independent experts who consider reports submitted by member states to the Social Charter.
European Court of Human Rights	A supra-national court that provides legal recourse of last resort for individuals who feel that their human rights have been violated by a contracting party to the convention.

Term	Definition
General Comments	These are notes produced by the UN treaty bodies (such as the CESCR) that interpret the provisions of human rights treaties. These cover a wide range of subjects, from the comprehensive interpretation of a specific provision (e.g., adequate housing) to general guidance on the information to be covered in state reports. Some also deal with cross-cutting issues, such as the rights of persons with disabilities, violence against women and the rights of minorities.
High Commissioner for Human Rights	The principal UN human rights official. They head the Office of the High Commissioner of Human Rights which was set up to support the UN human rights mechanisms.
Human Rights	
	The rights people are entitled to simply because they are human beings, irrespective of their nationality, race, ethnicity, language, sex, sexuality, or abilities. Human rights become enforceable when they are codified as conventions, covenants, or treaties, or as they become recognized as customary international law.
Human rights due diligence	An ongoing risk management process that a social or private enterprise should look to follow in order to identify, prevent, mitigate and account for any adverse human rights impacts that might arise from its work. It involves, assessing actual and potential human rights risks or infringements, acting on the findings, monitoring the resulting actions and communicating how actions have impacted on risks and infringements.
Inalienable	This refers to rights that belong to every person and cannot be taken from them under any circumstances.
Indivisible	This means all human rights are part of an inseparable whole. A person cannot be denied a particular human right on the grounds that it is "less important" than another.
Interdependent	This refers to the idea that enjoyment of a particular human right is dependent on enjoyment of all the others.
International Bill of Human Rights	Term used to embody the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.
Non-binding	A document, that carries no formal legal obligations, but it can carry moral obligations
Non-governmental organisation (NGO)	Organisations set up to be independent of government, often with a lobbying, charitable, or activist role. Some are large and work across countries, such as Amnesty International, whilst other are smaller local organisations.
Office of the United Nations High Commissioner for Human Rights	The OHCHR is a UN department that promotes and protects the human rights, mainly through helping governments, such as expertise and training. They can also assist other entities with responsibility to protect human rights to fulfil their obligations.
Political rights	The right of individuals to participate in the political life of their community and society, such as by voting for their government.



Term	Definition
Positive discrimination (affirmative action)	A term with the same meaning as affirmative action. Both refer to action by government or private businesses to redress past discrimination of groups of people such as women. Such action is usually viewed as a non-permanent measure and only expected to continue until such a time as equality is achieved.
Protected Characteristics	Equality Act 2010 sets out nine protected characteristics against which landlords should not discriminate when developing policies or delivering services: age; sex; race; disability; pregnancy; marital status; sexual orientation; gender reassignment; religious background.
Public authorities	A term used in human rights legislation and literature to refer to any organisation or person performing a public function or service. It therefore not restricted to local authorities and other state (public) bodies. For further details please see appendix 1.
Ratification	Process by which a state's legislature (usually the UK Government) confirms it has signed and become bound to a treaty. After ratification a state becomes a party to the treaty.
Rights holder	In general terms, all human beings are rights-holders under the UDHR, but the term is also used to refer to specific social groups that have entitlements in relation to specific duty-holders (bearers).
Social rights	This term used to refer to rights necessary for full participation in the life of society. It is therefore used as a short-hand term for the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter guarantee social rights.
Special Rapporteur	Person appointed to work in the OHCHR for a period not exceeding 6 years. Generally Special Rapporteurs examine, monitor, advise and publicly report on human rights on a particular theme (e.g., adequate housing) and publish an annual report to the Human Rights Council outlining their findings and conclusions for their activities such as responding to individual complaints, conducting studies and country visits.
Tenant Participation Strategy	The Housing (Scotland) Act 2001 places a duty on local authorities and registered social landlords to produce tenant participation strategies that are intended to enable tenants to shape landlords' services and scrutinise landlord performance,

## Appendix 3: Resources: human rights and empowerment

### Human rights

#### The British Institute of Human Rights

<https://www.bihhr.org.uk/>

The British Institute of Human Rights is an independent charity that promotes awareness and understanding about human rights. It is a useful source of human rights information, case law and advocacy examples. Their website contains a range of downloadable resources on different human rights, including adequate housing. It can also provide human rights training and consultancy.

#### Chartered Institute of Housing- Housing Rights

<https://www.housing-rights.info/index.php>

The Housing Rights website gives recent arrivals and housing advisers up-to-date information about people's rights when looking for a home, based on their immigration status.

#### Council of Europe

<https://www.coe.int/en/web/portal/home>

The Council of Europe is an organisation of European countries (including the UK) that seeks to protect human rights and promote European cooperation on legal, cultural, and social issues. It produced the European Convention on Human Rights (1950), the European Cultural Convention (1954) and the European Social Charter (1961). It runs training programmes that are aimed at the legal profession but there are occasionally courses aimed at a wider audience. Their website contains a wealth of human rights resources. Most is aimed at the legal profession, but it is in the process of producing a series of six human rights handbook for local and regional authorities. These Handbooks aim to offer an insight into the implementation of human rights at local and regional levels. The first two have been published.

- [Fighting Against Discrimination](#) focuses on the right to non-discrimination, specifically in relation to refugees, asylum seekers, migrants, and internally displaced persons (IDPs); Roma and Travellers; LGBTI+ persons
- [Social Rights](#), focuses on issues such as housing, health, education, work, and social security but it is content light compared to the first volume.

#### EachOther

<https://eachother.org.uk/>

A UK human rights charity that makes use of social media to improve public understanding of human rights. It provides accessible and interesting online content that can be shared with others, including infographics, stories, videos that aim to 'put the human' in human rights. Much of their digital content is based on the lived experience of ordinary people affected by human rights issues and could prove valuable in explaining human rights to tenants in an engaging manner.

## Equalities and Human Rights Commission

<https://www.equalityhumanrights.com/en>

The Equality and Human Rights Commission is a statutory body that has responsibility for the promotion and enforcement of human rights across Britain. It provides advice and guidance to individuals and organisations about human rights, reviews the effectiveness of state actions to advance and fulfil human rights obligations and the extent to which people fall short of attaining their human rights. It has powers to take legal enforcement action to clarify the law and address significant breaches of rights. It has a dedicated Scotland Directorate, which works closely with the Scottish Human Rights Commission, with whom it shares a human rights remit in Scotland.

It has produced useful guidance for social landlords on implementation of the Human Rights Act 1998 which can be found at: <https://www.equalityhumanrights.com/en/publication-download/human-rights-home-guidance-social-housing-providers>

It has also completed a housing inquiry into the ability of disabled people to live independently, which produced a dedicated report for Scotland: <https://www.equalityhumanrights.com/en/publication-download/housing-and-disabled-people-scotlands-hidden-crisis>

## Equally Ours

[www.equally-ours.org.uk](http://www.equally-ours.org.uk)

Equally Ours is an independent body that lobbies UK parliament on the importance of human rights and how they can benefit people in everyday life. It also supports evidence-based policy making and its website contains resources that have been designed to help organisations apply equality and human rights more effectively in their business to improve outcomes for people they work with. It has produced a free Equality and Human Rights Framework tool aimed at the voluntary and community sector organisations to help them assess performance and improve practice in integrating equality and human rights into all areas of work.

## FEANTSA

<https://www.feantsa.org/en>

FEANTSA is the European Federation of National Organisations and represents organisations working to address homelessness and housing exclusion in the EU. It promotes a better understanding of the nature, extent, causes of, and solutions to, homelessness and housing exclusion, which it sees as critical to protecting and fulfilling the right to adequate housing. Since 2015 it has issued an annual overview report in regard to Housing Exclusion in Europe, drawing on Eurostat data and local experts to assess EU countries' capacity to adequately house their populations.

## Human Rights Watch

<https://www.housingrightswatch.org/>

Housing Rights Watch is a network of associations, lawyers and academics from different European countries that seek to promote the right to housing by facilitating the exchange of information and mutual learning. The website contains or links to abstracts, decisions and conclusions of case law relating to adequate housing in different EU countries. It can also be a useful resource for sourcing EU papers on human rights, which can otherwise be difficult to track down.

## Office of the UN High Commissioner for Human Rights (OHCHR)

<https://www.ohchr.org/EN/Issues/Housing/Pages/ResourcesAndPublications.aspx>

The Office of the UN High Commissioner for Human Rights (OHCHR) works with governments, legislatures, courts, national institutions and other organisations to promote and strengthen the protection of human rights, mainly at national level. The prime focus of the OHCHR is the role of the state but it has begun to focus on the role of business operations in relation to human rights. The OHCHR works with UN treaty bodies to monitor how well states comply with the international human rights standards and provides secretariat support to the Committee on Economic, Social and Cultural Rights (CESCR), which has issued General Comments in relation to [adequate housing](#) and [forced evictions](#).

An important function within the OHCHR is the Special Rapporteur on Adequate Housing. The Special Rapporteur is an independent expert who focuses on best practices, challenges, obstacles, and gaps related to the delivery of adequate housing across the globe.

The OHCHR publishes papers on adequate housing, including reports by the Special Rapporteur, although the most accessible is perhaps a toolkit on the right to adequate housing, which can be found at: [https://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

## Scottish Human Rights Commission

The Scottish Human Rights Commission is Scotland's National Human Rights Institution, as accredited by the United Nations. It is an independent public body that works to increase awareness, recognition and respect for international human rights standards, including economic, social and cultural rights, and seeks to make them more relevant and easier to apply in everyday life. It has a particular interest in expanding understanding of and the applicability of human rights to private companies exercising public functions. It is currently acting as the secretariat to the working group that are preparing the second Scottish National Action Plan for Human Rights (SNAP 2), which aims to improve how international human rights are implemented in practice within Scotland.

It worked with the [Edinburgh Tenants Federation](#) and [Participation and the Practice of Rights \(PPR\)](#), which is a small human rights organisation based in Ireland, on the Housing Rights in Practice project that empowered people to tackle poor housing and living conditions by using human rights. A report outlining the project and setting out the lessons learned can be found at: <https://www.scottishhumanrights.com/media/2029/housin-project-report-vfinal-may-2020.pdf>

The SHRC has also published COVID-19: Implications for the Human Right to Adequate Housing in Scotland.

## The SHIFT - Global Movement to Secure the Human Right to Housing

<https://www.make-the-shift.org/>

The SHIFT is a non-profit organisation that seeks to promote housing as a human right as opposed to a commodity in an effort to resolve the lack of access to affordable, secure, and adequate housing and prevent homelessness, and forced evictions across the world. It seeks to challenge the ways financial actors undermine the right to housing and to both lobby and support states to implement human rights based housing strategies and regulate the impact of the private housing market in line with human rights obligations. Although the website contains little material of immediate practical value to housing providers, it provides access to various UN reports on adequate housing and can be easier to navigate than the OHCHR website.

## Tenant participation and empowerment

### Guide to Successful Tenant Participation

<https://www.gov.scot/publications/guide-successful-tenant-participation/>

Scottish Government guide that was originally developed in 2005 and updated in 2018 to provide advice to those working in tenant participation. It includes examples of how landlords have promoted tenant participation and tenant scrutiny.

### TPAS (Tenant Participation Advisory Service) Scotland

<https://tpasscotland.org.uk/>

TPAS is one of the two premier organisations that work in Scotland to promote tenant participation and provides various services to upskill tenants and support landlords to make it happen. Its website contains helpful case studies.

### TIS (Tenant Information Service)

<http://tis.org.uk/>

TIS is the other premier organisation that supports communities and housing organisations to work together to develop effective solutions. It has recently begun work on a Glasgow-wide project known as Engage Influence Change (EIC). This aims to enhance the capacity and resilience of communities within Glasgow through empowering communities to become involved and shape the social, economic, and cultural life of the city. TIS is also pursuing work to share learning around social landlords' experiences of promoting digital inclusion. <http://tis.org.uk/wp-content/uploads/2021/04/TIS-Digital-Strategy-2021-2024.pdf>

## Appendix 4: Additional resources

### Other websites

JustRight Scotland: <https://www.justrightscotland.org.uk/>

No Recourse to Public Funds Network: <https://www.nrpfnetwork.org.uk/>

Scottish Refugee Council: <https://www.scottishrefugeecouncil.org.uk/>

Shelter (England) [Human rights challenges to local authority homelessness decisions](#)

Shelter (Scotland) [Housing is a Human Rights blog](#)

### Some suggested further reading

Amnesty International. (2017). [What is the Universal Declaration of Human Rights?](#)

Council of Europe Guide to Article 8 (2020) at: [https://www.echr.coe.int/documents/guide\\_art\\_8\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_8_eng.pdf)

Council of Europe (2020) [The right to affordable housing: Europe's neglected duty - a human rights comment](#), Strasbourg: COE

CIH Scotland (2019) [Housing as A Human Right - Scottish Housing Day](#), jointly supported by CIH Scotland ALACHO, SFHA SAL, Shelter Scotland, TPAS and the Wheatley Group

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

Homes, A. and Grandison, G. (2021) [Trauma-informed practice: toolkit](#), Edinburgh: Scottish Government

Naeem, K. (2018) [Why we cannot ignore a Human Rights approach to Housing after Grenfell](#) - blog: British Institute of Human Rights

Shelter Scotland (2019) [Housing is a human right](#), Edinburgh: Shelter Scotland

Wolferink, G (2021) [Tenant Participation should be a simple FACT in every housing association](#) - blog reflecting on the Scotland's Housing Network Forum panel on 'Tenant Participation' LinkedIn

Young Foundation (2020) [Reimagining Rent- Social Innovation in the UK Private Rented Sector](#), Young Foundation and Nationwide Foundation

Young, I and Wilkins, Z. (2020) [Communities Driving Change: Shifting Local Systems](#), Young Foundation

Young, G (2021) [The right to adequate housing: are we focusing on what matters?](#), Glasgow: ALACHO and CaCHE



Chartered  
Institute of  
Housing  
Scotland

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

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