



# BACK THE BILL

The right to  
adequate  
housing in Wales



Chartered  
Institute of  
Housing  
Cymru

Shelter  
Cymru

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**If there had been a right to adequate housing in the United Kingdom, the Government and the local authority would have had a legal duty to consider seriously and in a timely manner, the safety concerns raised by the Grenfell Tower residents, before the conditions became life-threatening**

Geraldine Van Bueren QC, Professor of International Human Rights Law in Queen Mary, University of London and Visiting Fellow, Kellogg College, Oxford.

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**In June 2019 the Chartered Institute of Housing (CIH) Cymru, Tai Pawb and Shelter Cymru, in partnership with Dr Simon Hoffman of Swansea University, published a report entitled, “The Right to Adequate Housing in Wales: Feasibility Study”, which outlined why and how the right could be fully incorporated into Welsh law.**

**We, the three housing organisations involved in this campaign, believe that our feasibility study makes a compelling case for the incorporation of the Right to Adequate Housing as set out in ICESCR (International Covenant on Economic, Social and Cultural Rights) (“the Covenant”) into Welsh law, whilst also clearly setting out the route map for how we get there.**

**This is a call to action for us all to fundamentally re-think the value we place on social and all housing, and the role that simple bricks and mortar must play in acting as a starting point for any form of community, economic and social regeneration.**





The tragedy at Grenfell has come to represent how we have failed people in most need in our society – those in need of that most basic of human requirements: that of access to shelter, a place where they feel safe, a place to call home. Moreover, since the onset of COVID-19, whereby the fundamental message from governments the globe over has been 'stay at home', a further spotlight has been shone on our understanding of the concept of a home. It makes an assumption that people have suitable and sustainable accommodation, the financial means to stay at home or even a home at all – the reality in too many cases is very different. Central to Wales' post-COVID recovery must be the concept of 'home' where we build back better and tackle the housing crisis head-on.

**It has taken a deadly global pandemic to shake governments to the core and trigger an understanding that having a safe home might be central to human survival**

Leilani Farha, UN Special Rapporteur on adequate housing, writing in The Guardian, April 2020

This bleak portrait of the housing crisis is the basis for the fundamental conversation that we need to have as a nation. At the core of any solution to the housing crisis must be nationwide commitment to the fundamental principle that every one of us has a human right, underpinned by law, to access adequate and sustainable housing.

**We, the undersigned, back the Bill for a Right to Adequate Housing.**



# **The Right to Adequate Housing (Wales) Bill**

An Act to make provision to give further effect in Wales to the right to adequate housing as set out in Article 11(1) of the United Nations Covenant on Economic, Social and cultural Rights, and for connected purposes.

## **PART 1 – THE RIGHT TO ADEQUATE HOUSING AND RELEVANT AUTHORITIES**

### **The Right to Adequate Housing**

1. In this Act the ‘right to adequate housing’ means the right to adequate housing guaranteed by Article 11 of the United Nations Covenant on Economic, Social and Cultural Rights (the ‘Covenant’), as set out in Schedule 1 of this Act.
2. On commencement of this Act the right to adequate housing will be part of Welsh law.

### **Relevant Authorities**

3. A relevant authority for the purpose of this Act are:
  - a. The Welsh Ministers when exercising housing functions.
  - b. Local housing authorities as defined by the Housing (Wales) Act 2014 when exercising functions under that Act.
  - c.

## **PART 2 – PROMOTING THE RIGHT TO ADEQUATE HOUSING**

### **The Due Regard Duty**

4. A relevant authority must, when exercising any function mentioned in section 3(a) or 3(b), have due regard to the right to adequate housing.

5. A relevant authority when having due regard as required by this Act must take into account:
  - a. The Preamble to the Covenant.
  - b. Any relevant General Comment issued by the United Nations Committee on Economic, Social and Cultural Rights (the 'UN Committee').
  - c. Any relevant Concluding Observation or Recommendation made by the UN Committee subsequent to examination of the UK State Party under Part II of the Covenant.

### **A Housing Rights Scheme**

6. The Welsh Ministers must make a Housing Rights Scheme (the 'Scheme') setting out the arrangements they have made, or propose to make, for the purposes of discharging their duty under section 4.
7. The Scheme must be made, published and laid before the Welsh Parliament no later than 6 months from the date this Act comes into force.
8. The Welsh Ministers may remake the Scheme at any time but must review, and if they consider it appropriate, remake the Scheme within three years of the date on which the first Scheme and any subsequent Scheme is published.
  - a. If the Welsh Ministers decide to remake the Scheme at any time they must lay the remade Scheme before the Welsh Parliament
9. Before making or remaking the Scheme the Welsh Ministers must:
  - a. Publish a draft of the Scheme they propose to make.
  - b. Consult with the Equality and Human Rights Commission on the Scheme they propose to make.
  - c. Consult with any other stakeholders the Welsh Ministers consider appropriate.
10. The Scheme may include such matters as the Welsh Ministers consider appropriate but must include a procedure for a Housing Impact Assessment to be carried out on any proposal for legislation or policy or budgetary allocation which is likely to have a direct or indirect impact on housing in Wales.

- a. A Housing Impact Assessment in accordance with this section may be carried out at the same time as any other impact assessment the Welsh Ministers carry out and may be integrated with that assessment.
- b. A Housing Impact Assessment on a proposal for legislation must be laid with any Bill that the Welsh Ministers lay before the Welsh Parliament, and may be in the form of an integrated impact assessment.

### **Reporting on Progress**

11. The Welsh Ministers must publish and lay before the Welsh Parliament a Compliance Report on how they have complied with their duty under section 4.
  - a. A Compliance Report may be published as part of any report the Welsh Ministers publish on housing in Wales or as a separate report and must be laid before the Welsh Parliament.
  - b. The first Compliance Report must be published no later than 3 years after the coming into force of the duty under section 4 and thereafter periodically on or before the end of each succeeding period of three years from the date of any previous Compliance Report.

## **PART 3 – PREVENTING ACTS INCOMPATIBLE WITH THE RIGHT TO ADEQUATE HOUSING AND REDRESS**

### **Unlawful Acts**

12. It is unlawful for a relevant authority, when exercising a devolved function, to act in manner which is incompatible with the right to adequate housing.
13. For the avoidance of doubt an act as mentioned in section 12 includes a failure to act.
14. Any relevant authority which is compelled to act in a manner which is incompatible with the right to adequate housing by primary legislation will not commit an unlawful act under section 12.

15. Whether a relevant authority commits an unlawful act is a matter to be decided by a court.

### **Enforcement**

16. Any person who claims to be a person affected by an unlawful act under section 12 may bring proceedings before a court or tribunal or rely on the claimed unlawful act as a defence in any action against them by a relevant authority.

17. Where proceedings brought under this Part are to be dealt with by way of judicial review the persons listed below have standing to bring proceedings:

- a. Any person affected or likely to be affected directly or indirectly by the claimed unlawful act.
- b. The Equality and Human Rights Commission.
- c. Any person or body with sufficient interest in the subject matter of the proceedings

18. In addition to any other matter which it considers relevant, a court called upon to determine whether a relevant authority has committed an unlawful act must take into account those matters set out below:

- a. Any relevant General Comment issued by the UN Committee.
- b. Any relevant Concluding Observation or Recommendation made by the UN Committee subsequent to examination of the UK State Party under Part II of the Covenant.
- c. The impact of the claimed unlawful act on those affected.
- d. Whether the act or omission which it is claimed is an unlawful act is proportionate taking account of all relevant matters, including the public interest in Wales.

### **Redress and Remedies for an Unlawful Act**

19. In relation to any act which the court finds is, or would be an unlawful act it may grant such relief to the person affected by the unlawful act as it considers just and appropriate.

20. When granting relief under section this Act a court may grant:
- a. Any relief, remedy, or order that is within the power of a court to make in civil proceedings in England and Wales.
  - b. Damages for an unlawful act in order to afford just satisfaction to the victim.
21. Where a court is satisfied that damages under this Act will provide just satisfaction to the victim it must award damages, irrespective of whether any other relief or remedy is contemplated or awarded, unless there are strong and compelling reasons why such an award should not be made.

## **Schedule 1**

International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27

### *Article 11*

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.