

*Green Paper Consultation Response:
Securing a path towards adequate housing including fair rents and affordability*

THE RIGHT TO ADEQUATE HOUSING IN WALES

Welsh Government | September 2023

**Submitted jointly by 'Back the Bill' partners
Tai Pawb, CIH Cymru and Shelter Cymru**



This response is submitted jointly by the 'Back the Bill – the right to a good home' coalition partners, namely Tai Pawb, CIH Cymru and Shelter Cymru. 'We' and 'our' refers to the partner organisations. This response focuses solely on the right to adequate housing element of The Green Paper. The coalition partners will be responding individually to the questions on fair rents and affordability.

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1. Introduction

The Back the Bill coalition warmly welcome this Green Paper consultation, following the commitment in the Programme for Government to “*publish a White Paper to include proposals for a right to adequate housing.*”

Setting the context

“The housing situation needs to change from home just being seen as shelter... Holistic approach, taking not just physical needs but also emotional and wider needs.” Workshop participant.

Since 2019, we’ve campaigned to **secure housing as a human right** and built the evidence base on **incorporating the right to adequate housing in Wales**. A right supported by 77% of people in Wales surveyed in 2020.

Housing in Wales is in crisis. Record numbers of people in Temporary Accommodation, high social housing waiting lists, the increasing unaffordability of the Private Rental Sector and a younger generation for whom home ownership is increasingly a pipe dream. Exacerbated by the rise of second homes and Air BnB, too many people are struggling to find a safe, suitable home they can afford.

As a campaign, informed by international evidence, we firmly believe the **principle of housing as a legally recognised human right** is the mechanism necessary to drive a step- change, so that Wales has a sustained, long-term, cross-tenure vision and strategy to fix its broken housing system for current and future generations. This Green Paper commences this process, and as such we are excited and privileged to contribute. But as a coalition there are reservations over the Green Paper; its content, focus and consultation with all parties who may be affected.

We feel underwhelmed by the limited focus on human rights (only appearing once in the document) and lack of ambition for the positive, transformative opportunities offered by the full incorporation of housing as a human right. Since devolution, Wales has been progressive in its approach to human rights, evidenced through legislation around the Rights of Children, the Social Services and Wellbeing Act and Well-being of Future Generations Act. Unfortunately, this Green Paper does not follow in this ambitious and progressive agenda.

The Green Paper combines a right to adequate housing with fair rents and affordability – these are two distinct policy issues. While affordability is a component of the right to adequate housing – combining two diverse policies risks responses focussing on one issue rather than separately and also undermines a full exploration of either issue, regardless of one’s perspective.

Progressive realisation as a concept is also missing from The Green Paper. Given it is the legal and practical mechanism by which the right to adequate housing is delivered, this limits the scope of The Green Paper for change; failing to fully understand how a right to housing can be delivered and the opportunities that lie within the approach.

We are also concerned whether the focus and questions posed by The Green Paper around the right to adequate housing are sufficient (for instance around incorporation) to generate enough evidence to progress to a White Paper in Summer 2024. As such, we have included what we believe are more detailed, alternative questions with answers to try and bridge the gap in evidence base.

Finally, in compiling this response, we've spoken to a number of stakeholders from across the sector and people with lived experience of homelessness or inadequate housing. These conversations have informed our response throughout. As the right to adequate housing progresses to White Paper stage, we will continue to engage in this way and encourage the Welsh Government to do the same.

The right to adequate housing: An approach based on housing as a human right

A human rights-based approach to public policy has long been discussed and advocated in Wales. To better support the concept of 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, Tai Pawb, CIH Cymru and Shelter Cymru became 'Back the Bill' partners in early 2019.

The campaign began officially some 18 months following the tragedy at Grenfell Tower in London. In our view, that tragedy 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: a safe place to call home.

Reflecting specifically on the tragedy at Grenfell, Geraldine Van Bueren KC, Professor of International Human Rights Law in Queen Mary, University of London and Visiting Fellow, Kellogg College, Oxford, said:

"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" -

Moreover, during the COVID-19 pandemic - whereby the fundamental message from governments the globe over was 'stay at home' - a further spotlight was shone on our understanding of the concept of a home. It made an assumption that people had/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/was very different.

Leilani Farha, former UN Special Rapporteur on adequate housing, wrote in The Guardian in April 2020:

"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."

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 a nationwide commitment to the fundamental principle that every one of us has a human right, underpinned by law, to access adequate and sustainable housing. Central to a positive transformation of the housing landscape in Wales must be that concept of a 'home' for everyone that is safe and secure, is suitable for their needs and that they can afford – ultimately helping to end homelessness altogether and ensuring that the housing system is fit for purpose. Further, a rights-based approach will change the paradigm through which housing is viewed as a key driver (and determinant) of better health, well-being, education, economic activity, and general life chances, ultimately ensuring it attracts greater policy attention and investment.

The Green Paper's approach to human rights

As a campaign, we are concerned by the approach to human rights taken by The Green Paper and its selective approach to the right to adequate housing. We fully support and endorse the response submitted by Professor Simon Hoffman, an internationally regarded academic in the field of human rights. However, we would also like to summarise our position as follows:

- The absence from The Green Paper of Progressive Realisation and its importance to minimum core.
- While the Green paper pays regard to the 7 factors of adequacy, underpinned by General Comment No 4, it pays less regard to the wider aspects (i.e., freedoms and entitlements) of the Right to Adequate housing which are referenced under article 11 of the International Covenant on Economic, Social, and cultural rights (ICESCR).
- The paper lacks consideration of how the right to adequate housing could be incorporated into devolved law, an important factor of the right to adequate housing.
- Incorporation of the right to adequate housing could be relied on as a bedrock from which individuals and organisations could advocate for policies and practices to be given effect through implementation. The Green Paper does not refer to the value of incorporation in holding duty bearers to account.
- The Green Paper fails to acknowledge the benefits of incorporation as a legislative mechanism to ensure progressive housing policies are implemented, rather than through discretionary policy decisions.
- The Green paper presents the 7 factors of adequacy as aspirations; however, they should be seen as non-negotiable legal factors, all of which must be taken into account. Failure to do so means they may be downgraded to discretionary policy decisions. UN Committee Guidance Comment No.4 clarifies that the 7 factors cannot be divorced from the right to adequate housing.
- Furthermore, the 7 factors referred to are already obligations in international law that the UK has signed up, and therefore the Welsh Government should be recognising these obligations through devolved legislation.
- There is a disconnect between this paper and other areas of work by the Welsh Government in relation to human rights, notably research on 'Strengthening and advancing equality and human rights'. This is particularly important as the

recommendation of further incorporation of human rights has been accepted by Ministers.

- The selective use of UN Guidance, including the 7 factors to assess adequacy while ignoring for example:
 - General Comment No.3 which asserts these rights should be justiciable and therefore incorporated into law.
 - General Comment No.20 on Non-discrimination
 - General Comment No. 7 – Forced Evictions
 - General Comment No. 5 Persons with Disabilities
 - Special Rapporteur Reports e.g., Guidelines on the implementation of the Right to Housing, Access to Justice, Human Rights Based National Housing Strategies

Recommendation – Welsh Government engages with experts to reflect on their approach to human rights and the right to adequate housing to inform its framing of the forthcoming White Paper.

Housing and inequality in Wales

“Just because my name is different, doesn’t mean I should have a worse house.” Workshop participant.

The nature of housing inequality in Wales will be explored in this section. Before doing so, we’d like to highlight that The Green Paper fails to consider ask questions with regard to equality implications (including anti-racism) of the proposals with housing inequality being both a symptom and drive of both socio-economic and other inequality. This is disappointing given the Welsh Governments equality duty to consider the impact on equality of all proposals. In relation to the right to adequate housing, Article 2.2 of the International Covenant on Economic, Social and Cultural Rights obliges all States “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Incorporation is therefore a way to address inequalities.

Based on research by Shelter Cymru, prior to the Cost-of-Living crisis, one in three people in Wales live in unsafe or unaffordable housing. The pandemic highlighted these inequalities in the housing sector as lockdowns led to people in Wales spending prolonged amounts of time at home. During this period, some citizens spent time in houses of good quality with plenty of living space, others lived in overcrowded, poor-quality housing conditions, while other individuals experienced homelessness.

Based on a survey by Shelter Cymru (2020), during lockdown 32% of households lived in houses with hazards, including damp, mould, and electrical hazards, as well as leaking roofs or windows. Rising housing costs, the reduced size of the social rented sector and the growth of private renting have contributed to increasing housing inequalities (UK Collaborative Centre for Housing Evidence, 2021).

In May 2023, the Welsh Government estimated that there were around 154 rough sleepers in Wales. This has increase from 144 since the start of 2023 and 76 in May

2021. The total number of people in temporary accommodation in May 2023 was reported to be 10,872. This has increase from 9,410 since the start of 2023 and 6,383 in May 2021. Spiralling upward trends in homelessness suggest that current policies aren't working – particularly worrying when these figures don't account for 'hidden homelessness'.

The pandemic highlighted the existing inequalities for some population groups in accessing adequate housing. One of those groups are Black, Asian, and Minority Ethnic people who are disproportionately likely to live in overcrowded houses and have a higher risk of homelessness. Refugees, migrants, and asylum seekers also face housing inequalities including difficulties accessing adequate housing due to racism, discrimination, inequality, or structural factors. Individuals from the LGBTQ+ community are four times more likely to be in homelessness compared to their peers. Another population group facing housing inequality is disabled people who need to live in accessible houses that support their safety and independence in daily living. Evidence suggests that 26% of people in Wales have some form of impairment and more than 10% have a mobility impairment. The numbers of older people with physical impairments are estimated to rise by 50% between 2015 and 2035 (Auditor General for Wales 2018) but they are faced with Hidden Housing Crisis (EHRC, 2019) – shortage of accessible housing and inadequate adaptation and allocation system. Housing and homelessness are also gendered issues impacted by the persistent gender income gap, gender differences in caring responsibilities and women's experiences of domestic violence and other forms of harassment, abuse, and exploitation, including 'sex for rent' (WEN Wales, 2021).

Housing inequality clearly exists in Wales. It's unfortunate that The Green Paper fails to recognise or ask questions around this, particularly given that poor housing is a symptom and implication of socio-economic and other forms of inequality. On a policy level, for instance, this could have been an ideal opportunity to explore housing considerations within the Anti-Racist Wales Action Plan, and the impact of legislation on positive change. On a legal level, it also fails to recognise requirements for this around Article 2.2 of the International Covenant on Economic, Social and Cultural Rights obliges all States "to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Recommendation - Welsh Government undertake work to understand how the right to adequate housing can tackle inequalities in Wales.

The cost of inadequate housing in Wales

Poor housing conditions and homelessness can have adverse effects on individuals' physical and mental health, increasing use of the NHS, worsening self-reported health, and reducing life expectancy. In a [2019 report](#), Public Health Wales estimated that poor housing costs the health service in Wales £95m per year. Housing Support services in Wales generate an estimated gross saving of £300.4m. When taking into consideration the annual spend of the Housing Support Grant in Wales, this equates to [an estimated net saving of £176.7m](#). The benefits of an invest to save approach in housing is highlighted in our cost-benefit analysis on incorporating the right to adequate housing (discussed in more detail later).

[Homelessness](#) or [living in inadequate](#) housing is associated with poorer educational outcomes for children. Households with access to affordable housing have more available income that can be used for nutrition, further helping children to perform better at school.

There is evidence that improving housing adequacy is associated with higher levels of productivity and economic activity. A lack of affordable and adequate housing is also associated with increased contacts with the criminal justice system. Inadequate homes tend to not be energy efficient, resulting in greater emissions of greenhouse gases and low levels of thermal comfort. [Public Health Wales research](#) explored a case study example focusing on the costs and benefits of improving a Welsh dwelling with an energy efficiency score of 21. Home improvements would include loft insulation, installation of double glazing and improvement of the heating system, which would result in increasing the energy efficiency score of the building to 57. Additionally, the CO2 emissions of the dwelling and the annual fuel cost would decrease by 53% and 49%, respectively.

Public opinion and stakeholder engagement

A 2020 representative [You Gov poll](#) on behalf of the Chartered Institute of Housing (CIH) Cymru of around 1,000 individuals in Wales found that 77% of people were in favour of the introduction of a legal right to housing and 83% supported that the government should be responsible for ensuring everyone has access to a decent home.

On publication of our Draft Bill at the same time as the poll, [key signatories](#) – from across the housing community, elected representatives and commissioners, academics and charity and third sector leaders – backed the call to introduce a right to adequate housing. To date, we have more than 60 signatories representing a variety of organisation, including a majority of RSL CEO's. We've also been pleased to hear a range of positive statements from the WLGA's Cabinet Lead for Housing.

2. Green Paper consultation questions on a right to adequate housing

While we recognise the direction of The Green Paper questions in framing the initial analysis on the right to adequate housing, from our perspective they will not generate sufficient evidence to progress towards a White Paper in the summer of 2024. We believe they are reductive in their approach, lacking in vision, ambition and in their approach to human rights and incorporation. We are concerned therefore that questions do not sufficiently move us towards incorporation.

Our concerns to the human rights aspects of The Green Paper have already been outlined in this response. Therefore, the next two sections will focus on our response to the questions posed by The Green Paper as well as supplementary questions we feel are necessary to build a greater evidence base on incorporating the right to adequate housing in Wales.

Q1. Do you think that the 7 factors of adequacy are something to aspire to achieving in Wales? If so, what mechanism or combination of mechanisms do you think are required to achieve the 7 factors of housing adequacy in Wales?

The Back the Bill partners advocate for the full incorporation of the right to adequate housing, as per UN guidance. Adequate housing was recognised as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights. As the right to adequate housing is relevant to all states that have ratified these treaties (including the UK), the focus should be on incorporating these rights.

The seven factors are as follows:

- Security of tenure
- Availability of services, materials, facilities, and infrastructure
- Affordability
- Habitability
- Accessibility
- Location
- Cultural adequacy

It should also be noted that sustainability has recently been recognised by the UN Special Rapporteur on the right to housing but is not included in the definition under international human rights. In this context, sustainability may be seen to be “low or zero emission housing, that is built with regenerative and sustainable materials, and that adequately protects against climate-related disasters and weather”.

The positively transformative potential of the right to housing in resolving the housing crisis in Wales may only be realised if all 7 factors (with reference to sustainability) are embedded in law, focused on housing as a human right. Doing this will provide the

vision and joined up policy and strategy, which allows all stakeholders to work together in a long-term way.

“Foundation for us is safety. We want safety, security and human dignity – without this our humanity is incomplete – we agree with the UN definitions.”
Workshop participant.

As a campaign, we have concerns with this question in two areas; firstly, the term ‘aspire’ and secondly the apparent reductive approach to the right to adequate housing.

The term aspire ignores the fact that these terms are already recognised by international treaty and something the UK is obliged to work towards. It also runs a risk that adequate housing can be seen as a competitive arena, where one area is pitched against another in a ‘zero-sum game’. In doing so, it may also question the Welsh Government’s approach to an existing international law which they have a duty towards.

UN Guidance on the right to adequate housing provides much more detail than just these 7 factors on what a right to adequate housing entails. These include freedoms and entitlements:

Freedoms -

- Protection against forced evictions and the arbitrary destruction and demolition of one’s home.
- The right to be free from arbitrary interference with one’s home, privacy, and family
- The right to choose one’s residence, to determine where to live and to freedom of movement

Entitlements –

- Security of tenure
- Housing, land, and property restitution
- Equal and non-discriminatory access to adequate housing
- Participation in housing-related decision-making at the national and community levels

These are fundamental to the right to adequate housing and possess equal relevance to the 7 factors of adequacy. Recognising this in the future, can help highlight the transformational potential of the right to adequate housing and also address inequalities in society.

Full incorporation of the right to adequate housing, as can be seen by our draft bill and feasibility study, is the recognised way to deliver change. Not incorporating the right to adequate housing fully risks it being seen as a discretionary policy which can be changed in the future. It may also undermine further conversations on the benefits of rights.

Mechanisms

The second part of this question refers to mechanisms that may need to be introduced to support the right to adequate housing in Wales. Our draft Bill considers some of these mechanisms which include:

- Housing Rights Strategy
- Full Participation of people receiving housing
- Ensuring Access to justice
- A justiciable right
- Housing rights impact assessment
- Regular reports to the Senedd

A flavour of mechanisms that have been introduced internationally include:

South Korea – Informal justice systems

In South Korea the municipal government of Seoul established a committee against human rights violations to enable communities and individuals to raise human rights complaints before a diverse panel of experts that includes city officials, human rights lawyers, people with lived experience and social workers. The committee investigates and makes recommendations on human rights violations at the city level. It works in tandem with a city ombudsperson who, once a violation has been established, can make an official complaint, and trigger formal proceedings.

Housing Rights Advocate Canada

The Federal Housing Advocate is an independent, nonpartisan watchdog, empowered to drive meaningful action to address housing need and homelessness in Canada. The Office of the Federal Housing Advocate, housed at the Canadian Human Rights Commission, helps to promote, and protect the right to housing in Canada, including the progressive realisation of the right to adequate housing. The goal of the Advocate's work is to drive change on key systemic housing issues and advance the right to housing for all in Canada.

The Advocate is responsible for making recommendations to improve Canada's housing laws, policies, and programs so that they enable people and families in Canada to have access to adequate, affordable, and safe housing that meets their needs. The Advocate's mandate is guided by a human rights-based approach, which values participation, accountability, non-discrimination, equity, transparency, empowerment, and respect for human rights laws and obligations.

Recommendation – Welsh Government recognises right to adequate housing as an obligation to fulfil through incorporation rather than as aspiration to strive towards.

Q2. What considerations should be taken into account when establishing a minimum core for Wales against the 7 factors of housing adequacy?

Minimum core is the minimum essential level of service and in this context can be understood as access to shelter. While establishing a minimum core will be necessary as part of the immediate implementation of the right to adequate housing, focusing solely on this without consideration of progressive realisation misses the point of the right to adequate housing. The duality of minimum core and progressive realisation is currently being explored as part of legislation in Scotland. As it's not possible to divorce minimum core from other elements of the right to adequate housing, we discuss below progressive realisation ahead of exploring minimum core.

Progressive realisation

The right to adequate housing is an international human right. It is set out in Article 11(1) of the ICESCR which reads as follows: *'The States Parties to the present Covenant recognise 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.'*

The right to housing is accompanied by a general obligation to respect, protect, and fulfil the right. The right to housing may be *fulfilled progressively, over time*. This means that the government is required to *make progress towards the fullest possible realisation of the right through the application of maximum available resources*. This is called *progressive realisation*. Progressive realisation means that governments have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full and wider realization of the right.

ICESCR also immediately prohibits discrimination and requires the provision of at least a minimum core level of enjoyment of the right to housing, avoiding homelessness, destitution, and degrading treatment via provision of shelter.

Minimum Core

Minimum Core ***must be seen through the lens of progressive realisation***. As identified in independent research undertaken by Alma Economics, there is no country in the world that could fully deliver the right to adequate housing overnight.

The UN's Economic, Social and Cultural Rights Handbook identifies, *"Minimum core obligations must be seen as a first step, not the conclusion of a process of realizing economic, social and cultural rights. The principle must not be seen as involving a minimalist approach. In particular, it should not be used to imply that only the minimum core of an economic, social, or cultural right is justiciable. Definitions of the content of civil and political rights are being expanded continually; the search for similar clarity with respect to economic, social, and cultural rights will continue and should not be viewed as an obstacle to addressing violations of these rights. Already, much work*

has been done to identify the basic components of each economic, social, and cultural right in terms of both obligation and entitlement.”

As such, there is a real risk that through focusing on minimum core without progressive realisation, the right to adequate housing will not be realised. It also goes against the progressive approach, as outlined by the Welsh Government’s Ending Homelessness Action Plan. As campaign partners we understand the position adopted by the Minister for Climate Change and Housing whereby changes need to be in place prior to incorporation; however, we feel this misses the notion that progressive realisation – which international law supports – and legislation are the two primary drivers of realising a right to adequate housing.

Recommendation – Welsh Government engages with experts to focus on progressive realisation (including the link to minimum core), to understand how incorporation can work in Wales, and to reflect on the role of progressive realisation as a key driver of change in the forthcoming White Paper.

Q3. What type of monitoring arrangements and/or enforcement measures should be available to ensure the delivery of housing adequacy? (Please explain your reasons)

Monitoring and enforcement options cannot be divorced from the method of incorporation. Therefore, in answering this question, we will first focus on the method of incorporation. However, as partners we feel this question reflects a misunderstanding of the right to adequate housing. Rather than delivery – the focus should be on “to ensure the progressive fulfilment of the right to adequate housing”.

When considering how best to implement human rights in Wales, our [Back the Bill feasibility study](#) considers three options of incorporation – indirect via due regard duty (Option A), direct via compliance duty (Option B) or the adoption of a dual approach. Option A and B both offer distinct advantages but also challenges. Combining both into a dual approach would offer both advantages – a strong proactive framework for policy making and strong enforcement if the right to housing is breached.

Model A can promote a proactive approach to the right to adequate housing in policy development (including legislation). Where this is insufficient to ensure right-compliant implementation of housing policy Model B could be deployed to provide redress for individuals or groups adversely affected. It’s also important to recognise that any future legislation on the right to housing wouldn’t sit in isolation from other policy platforms. Indeed, it would serve to enhance and widen existing provisions under, for example, the Human Rights Act 1998 and legislation such as the Rights of Children and Young Persons (Wales) Measure, Equality Act 2010, Social Services and Well-being Act and the Well-being of Future Generations Act.

Internationally, there is evidence as to the impact of incorporation of social and housing rights, although it is difficult to source evidence of direct impact. This is because the extent to which the right is realised depends on numerous factors,

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

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

Draft Bill

Working closely with Dr Simon Hoffman – as the author of our original feasibility report – in December 2020 we published a Draft Bill ([English](#) / [Cymraeg](#)) as a method of demonstrating what could be achieved in legislation. This draft bill has been signed up to by a range of leading housing professionals in Wales and human rights experts.

In Part 3, the Draft Bill allows for redress – as referenced above – by indirect and direct incorporation: a strong, proactive framework for policy making and strong enforcement if the right to housing is breached.

Monitoring arrangements

UN Guidance provides examples of how rights can be monitored, but this is down to each individual country, however “at a minimum, all accountability mechanisms must be accessible, transparent, and effective.”

Our Draft Bill identifies monitoring arrangements already listed in this response. However, Welsh Government may wish to consider further monitoring arrangements.

Further mechanisms to consider

Recognising the scale of change required and to provide assurance to bodies such as local authorities and the Welsh Government, there are other potential options to consider such as a 'sunrise clause' which provides an extended timeframe before authorities may be subject to legal redress.

No country has incorporated the right to adequate housing in the same way, therefore we would highlight the opportunities to learn from international practice and where Wales could lead the way. Factors to consider could include the introduction of specific bodies which would make the right to adequate housing implementable, ensuring a monitoring and compliance framework are adhered to. Other options could include

the introduction of a Housing Commissioner, or bodies similar to the Canadian model described above.

A proposed framework for human rights indicators (taken from UN Factsheet on the right to adequate housing)

The framework adopted by OHCHR and more specifically its set of indicators should bring to the fore an assessment of steps taken by a State in addressing its obligations. Examples of indicators for the right to adequate housing are the date of the inclusion of the right to adequate housing in the constitution (structural indicator); the share of public expenditure on social or community housing (process indicator); the proportion of the urban population living in slums and/or the reported cases of forced evictions (outcome indicator). It is also crucial to produce indicators that are disaggregated by relevant group and potential grounds of discrimination.

The risk of increased litigation

It's not the intention of the right to adequate housing to increase litigation. Progressive realisation of a right to housing in law requires, for example, sustained investment of the maximum available resources (not simply financial, but for example land, technical and other resources) and sustained progress towards the full realisation of that right over time. By enacting a commitment to progressive realisation, and with the support of effective non-judicial governance mechanisms, the risk of litigation is mitigated. And crucially, a greater number of people are able to access their right to a good home.

It is important that people have access to justice, ***but litigation is a measure of last not first resort***. Evidence from Wales and Scotland shows that there is little risk of human rights legislation leading to a 'floodgate' of legal cases; but providing people with mechanisms to exercise their rights influences policy changes and ultimately delivers better outcomes for people.

Guidelines for implementation of the right to adequate housing

The UN has produced guidelines for implementation of the right to adequate housing. Some of these guidelines are summarised below:

- Incorporation of housing as a right – recognition of legal changes needed to reflect this.
- Taking immediate steps to ensure the progressive realisation of the right to housing, in line with the standard of reasonableness – concrete steps including actions and timelines that target sufficient resources at those most in need.
- Ensure meaningful participation in the design, implementation and monitoring of housing policies and decisions.
- Implement comprehensive strategies for the realisation of the right to housing – Housing strategies must identify clear goals, outcomes, coordination and identify how obstacles can be overcome.
- Eliminate homelessness in the shortest possible time and stop the criminalisation of homelessness.

- Address discrimination and ensure equality – including positive measures to ensure access to housing, eliminate housing discrimination, and tackle issues around accessible homes.
- Ensure gender equality in housing – particular focus on inequality in relation to domestic abuse and housing, supply and participation in housing design and community planning.
- Ensure the capacity and accountability of local government – coordination of plans, local human rights-based housing strategies, and adequate funding to enact these changes.
- Ensure the right to housing informs and is responsive to climate change and address the effects of the climate crisis.
- Ensure effective monitoring.
- Ensure access to justice for all aspects of the right to housing.

Recommendation – Welsh Government reviews the Back the Bill campaigns Draft Bill as a starting point for incorporation, recognising the support it has across the housing sector. Further work is also undertaken to consider what mechanisms are needed to ensure a right to adequate housing can be implemented and monitored.

Q4. Are there any other considerations or potential implications of working towards delivering the 7 factors of housing adequacy you wish to highlight?

Our response to this question can be found in the next section of the paper, with individual questions and answers posed for clarity and ease of the reader. However, as with the previous question, we feel the wording here reflects a misunderstanding of the right to adequate housing. Rather than focusing on “working towards delivering the 7 factors of housing adequacy” – the question should focus on “working towards delivering the right to adequate housing”.

3. Back the Bill alternative Green Paper consultation questions

This section seeks to build the evidence base by providing insights we feel necessary for the Green Paper to progress to White Paper stage next year.

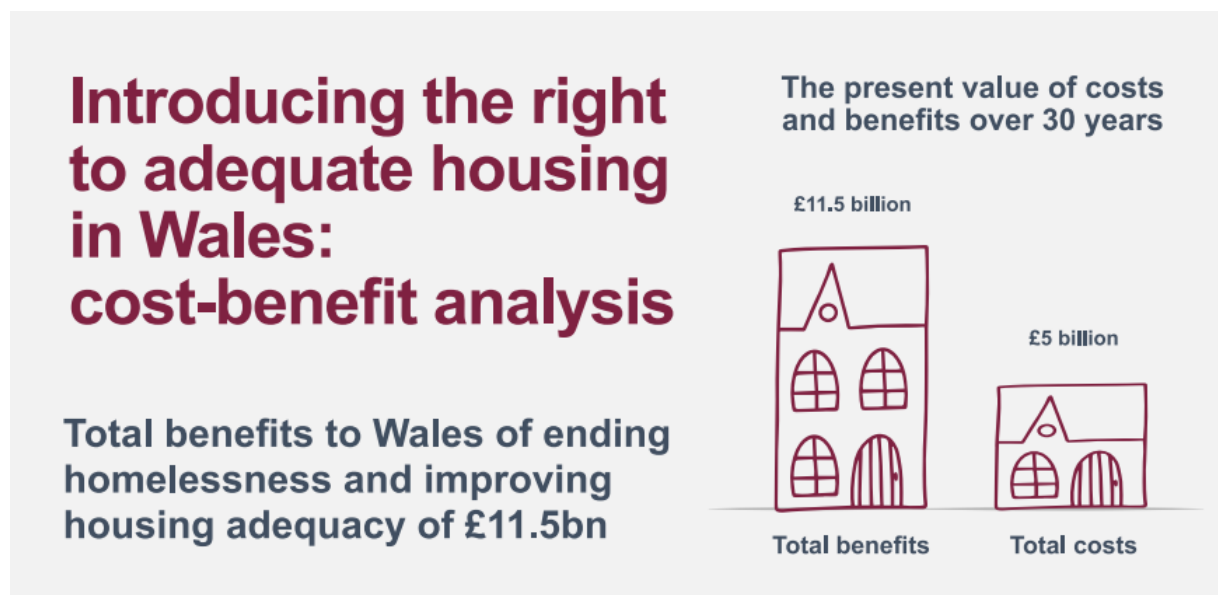
Q1. Research has shown that incorporation of the right to adequate housing in Wales will save £11.5bn over 30 years, with benefits to the NHS, Local Authorities, and well-being. What do you see are the main benefits around incorporating the right to adequate housing into Welsh law? Are there any disadvantages?

Morally, the right to adequate housing has public support in Wales and may be seen by many as 'the right thing to do'. Providing the right to a good home is a 'gift' to current and future generations. However, beyond that there are a number of reasons why incorporation of a right to adequate housing is the right thing to do and we'll explore these benefits in this section:

Cost-Benefit Analysis

We commissioned Alma Economics to independently undertake a cost-benefit analysis of introducing a right to adequate housing in Wales. We published the research on its conclusion in July 2022.

Alma Economics *identified benefits to the public purse worth £11.5bn against overall costs of £5bn over a 30-year period*. It is projected that those benefits could start to outweigh costs after just six years.



For every £1 spent on the right to adequate housing, the paper highlights £2.30 in benefits (and each of the categories referenced below are explored in greater detail in the report).

It will:

- save **£5.5bn** in improved well-being.
- save **£2bn** from local council budgets.
- save **£1bn** for the NHS; (likely an under-estimate and in addition to savings derived from existing Welsh Government housing-based policies)
- save **£1bn** for the criminal justice system; and
- generate **£1bn** in additional economic activity.

All figures in the modelling, including all estimates of benefits which are discussed in the following subsection, were inflation-adjusted, and represent constant 2025 (real) values. If inflation is higher or lower than expected, real prices remain unaffected.

Costs and benefits of introducing the right to adequate housing in Wales

Most costs relating to homebuilding and housing adaptations are generated over Year 1 to Year 10. Other costs relating to the provision of housing support to households exiting homelessness, rents, and costs of securing suitable accommodation continue until Year 30.

Benefits, including savings to the public and private sector as well as wellbeing gains, start materialising from Year 1, during which a proportion of homeless households exit homelessness and housing stock begins to be adapted at a faster rate than under current policies. In year 6 and beyond, benefits start outweighing the costs. This means that before Year 10, the year in which the RTAH will be fully realised, the introduction of the RTAH will generate more benefits than costs.

The scenario for progressive realisation of the RTAH in Wales is also expected to generate some offsetting fiscal benefits. Based on findings from Phase 1, ending homelessness and making housing adaptations can generate around £1 billion in cost savings for NHS Wales over a 30-year period due to reduced use of drug and alcohol treatment and reduced need for mental health services, as well as benefits due to a reduction in accidents in the home the introduction of the RTAH in Wales will support current plans toward a Healthier Wales and contribute to putting NHS Wales onto a sustainable path. Supporting homeless households to move out of unemployment could generate additional economic output of around £900 million over 30 years. Regarding cost savings to the criminal justice system, the report estimates that around £1.3 billion could be saved. Additionally, access to adequate housing can lead to reduced crime, thus fewer victims of crime and enhanced community safety (Alma Economics, 2021).

The model also includes benefits for local authorities due to reduced use of homelessness services, which are estimated to be around £2 billion. The report also considers the improved wellbeing of households due to moving from homelessness into secure housing as well as due to reduced housing hazards as a result of housing adaptations (£5.5 billion). The model also includes the rental value of newly built houses, which is estimated to be around £1 billion.

Joined-up policy making

Wales' housing emergency is getting worse. To tackle it we need a joined-up policy framework that includes a vision of housing that all stakeholders can work towards to achieve. Housing policy in Wales has seen many progressive moves in recent years, from the Housing Act, Renting Homes, Rapid Rehousing and Housing First, and plans to increase the supply of social housing to name a few. However, a right to adequate housing would ensure all these changes come from the same place, interact well with each other, and provide a long-term policy direction for all stakeholders to plan towards delivering. Current ways of working have meant that a number of these changes have had negative unintended consequences on other areas of policy, or risk benefits not being fully realised. For example, the level of Housing Support Grant funding risks undermining WG's ending homelessness priorities; strong levers are not in place to ensure that more social homes reduce the numbers of people who are homeless.

The right to adequate housing can be the glue that binds together existing plans and policies – complementing and supporting their individual policy goals and driving a more joined up approach. For instance,

- learning from Scotland has identified how Rapid Rehousing could be supported by incorporation of a right to adequate housing.
- Some of the challenges experienced through implementing the Renting Homes Act may have been more straight forward if they were part of a wider package of change.
- More progress may have been made against the provision of Traveller sites across Wales.
- Increased the supply of accessible homes in the private and social sectors.
- A right to housing could support goals around housing that are detailed in the Anti-Racist Wales action plans.
- Participation could support goals around more accessible and adaptable homes that suit the needs of everyone.
- A right to housing could improve the standards of groups who traditionally have poor access to housing such as Black and minoritized people.
- Legislation could support the implementation of WHQS2023 and drive-up standards.
- Legislation could ensure housing gets its fair share of the budget with mechanisms available through the Senedd to challenge.

Support for Environmental policies

Separate to the benefits of incorporating the right to adequate housing, Alma Economics estimated that decarbonisation would generate £30bn worth of health and wellbeing benefits by 2050. Housing is responsible for 9% of Greenhouse emissions. If the Wales is to decarbonise its economy by 2050 and reach net zero, housing clearly has a part to play. While plans are being developed to help the Welsh housing stock, clearly, these two policies not only have huge economic potential for Wales but can support each other's goals. Decarbonisation needs housing adequacy to improve, and housing adequacy needs to happen because of decarbonisation. Given that these two

policies are interlocked and generational, incorporation seems the most viable way to achieve these goals.

The UN Special Rapporteur for the right to adequate housing has produced a short guide in how the right to housing can support addressing climate change. As well as efforts around buildings, energy efficiency and retrofitting, the right to adequate housing can support planning and policy making around the design of communities and homes, to mitigate impact, limit the risk of flooding and ensure the homes that are built fit people’s needs. Incorporation can drive the resources and changes needed to ensure these activities and actions can be done.

Lived Experience workshops

As part of our response, we’ve held five workshops with people who’ve experienced either homelessness or poor housing. These workshops were held with and supported by the following organisations:

Participant Group	Support organisation
Black and minoritised communities	Ethnic Youth Support Team
Young people	End Youth Homelessness Cymru
Disabled people	Disability Wales
People who have experienced homelessness	Shelter Cymru
Refugees & Asylum seekers	Oasis/Tai Pawb

During discussions, participants were asked about topics ranging from:

- Experiences of poor housing
- What difference a legal right to housing could make to their lives
- What a good home would/should look like, according to their needs

Conversations didn’t solely focus on the UN definition of the 7 elements of adequacy; however, where possible we’ve collated some of the comments against elements of the right to adequate housing to support easier analysis. The exception to this is the Refugee and Asylum seeker workshop which is presented separately due to the issues raised being more specific to participants status.

Key themes from these sessions included:

- The impact of inadequate housing
Participants told us the impact poor housing had on their lives including with one participant telling us it was like “living in hell”. Participants told us how poor housing affects “mental health and dignity” and that it can be “traumatising”. One participant told us he’d been provided accommodation in a caravan covered in mould as while on the council waiting list for 3 years with only one room, no shower or gas. Having always suffered with his mental health, the caravan “didn’t help at all” but now he has been supported by Housing First into a stable home, looking back it’s “like two different people.”

- Understanding rights and access to justice for all
At one workshop in particular, respondents focused on the benefit of knowing your housing rights and then how to ensure they are achieved through having clearer mechanisms or access to justice. *“We need a clear process, simplified, how to access support with issues with housing... (We need) Guidelines on the law.”*
- Security of tenure
Discussions here focused on the home as a foundation to living a good life and included:
 - *“At the time I needed [a good home], it would have helped me feel more secure and protected my mental health as well as physical health.”*
 - *“Being able to settle down, make it my own, decorate, putting pictures up. Also, it would have stopped me feeling anxious and scared. I could have planned ahead better.”*
 - *“No safety net when things go wrong, constant stress”*
 - *“Damages relations when family need to step in, shouldn’t be this way”.*
- Affordability
Unsurprisingly, some discussions highlighted the difference between the private and social sector in terms of affordability. One respondent told us, *“As a social housing tenant that is suitably occupied, my rent is affordable. I have no shortfall. If there was a shortfall and I had to rent privately, this would put me under financial pressure and affect my mental health.”* While another highlighted the impact of a home they can afford saying they wanted *“to live in a safe home, that can be easily affordable on a basic wage. And to know that I can pay rent, heat my home and afford to feed my family. We don't expect fancy holidays or cars. But to live without being forced to fear hunger or seasonal extremes.”*
- Availability of services and infrastructure
Some participants highlighted how they felt the internet should be considered as important as other infrastructure needs of a home such as water, electricity, and gas. One respondent from a refugee background highlighted that refugees were less likely to complain about issues with connections to services such as water or heating, as they may be from countries where these services aren't available, and you have to collect water yourself.
- Location
Respondents reflected that a good home is located in a community, which means access to green spaces, doctors, shops, and employment opportunities. One participant said of their current home, *“The fact that I can walk to my doctors, pharmacy, bus stop is perfect for me. Shops are close enough and everything is on my doorstep including green spaces and leisure facilities.”* Conversely, another participant talked about the impact of living in Temporary Accommodation in a caravan, which required a long taxi journey to do anything including a shop. Others talked about the importance of closeness to facilities in preventing feelings of loneliness and isolation. This included proximity to things like Halal butchers and places of worship.

- Habitability
Across a number of workshops, there were recurring themes of mould, lack of action on the part of landlords and blame placed on tenants for causing dampness through lack of heating. A number of participants talked about the health impact poor housing was having on their family, including asthma and respiratory problems. Finally, some participants expressed a link between poor housing, how issues were dealt with, and discrimination. One person told us, *“Just because my name is different, doesn’t mean I should have a worse house.”*
- Entitlement of equal and non-discriminatory access to adequate housing
Across both these groups, there were feelings that when issues were reported to either landlords or local authorities, they were not resolved satisfactorily. One respondent said, “...health and local authority don’t listen and are barriers”, while another said that it feels like “we are having to chase this up and local authorities are not trying to help”. For Black and racially minoritised tenants in particular, there were feelings that discrimination was a reason for this and that they should be happy accepting any form of accommodation. There were also fears of not wanting to complain too much in case that affected how issues were dealt with.
- Freedom - The right to be free from arbitrary interference with one’s home, privacy, and family
In particular, discussions from the group of young people focused on the importance of safety to a good home. This included both within the home and outside it, for instance a safe community that is accepting of people and non-judgemental.
- Accessibility
Participants talked about accessible homes and the impact this would make on their lives, including not having to choose being able to live near their friends and networks in an unsafe home, or living in a safe home away from support and networks. One participant mentioned the challenges of living at home with her disabled son who was in an electric wheelchair. Unfortunately, current standards mean homes only have to be wide enough for a non-electric wheelchair which made the house very difficult to manoeuvre. Another highlighted that given the size of some living spaces, ensuring wheelchair accessibility could make it hard to socialise and have family or friends round as there was not space for a sofa. The need for storage space and a spare room for some disabled people was highlighted. *“Home needs to be seen as more than a place to sleep and eat, [...] home needs to be seen as a space for living”*.
- Culturally adequate housing
Black and minoritised tenants talked in particular about the need for more homes that suit differences in cultures. This includes differences in cooking facilities, more intergenerational housing and installing a bidet (which social landlords have refused).

- Refugee Workshop

Our workshop with refugees identified a number of issues specific to people's experiences as an asylum seeker and refugee in relation to housing. Many saw a home as an opportunity to provide stability, rebuild their lives and contribute. *"House mean I am accepted in new homeland, where I belong and feel safe. It is a place I can be happy. Having home make me more motivated and do my hard work to integrate successfully into new society and be good value for them."* This included dealing with poor health, opportunities for schools for children, jobs, and make friends:

- *"It would improve our mental health, it is easier to accept physical health problems, but the mental health impact of not having a home is huge. Stress is bad."*
- *"We need our children to have stable friends at school in order to start feeling settled."*

Extended stays in Temporary Accommodation were found to have a negative effect on family life and the opportunity to move forward. Affordability, location and cultural adequacy in particular were highlighted as issues important to ensuring a good home.

These workshops demonstrate the breadth of what people understand to be a good home – and how that may be transferred to the right to adequate housing. They highlight the need for elements of adequacy not to be considered on their own – as the benefits of one element may be reliant on another. Overall, this could be taken to re-enforce the benefit of the right to adequate housing as a whole, providing a framework underpinned by human rights to ensure a good home for all.

Recommendation – Welsh Government explores the full potential of the right to adequate housing and the benefits it can bring to housing and other policy areas.

Q2. What could be the barriers to incorporation?

As a coalition, we've identified the following potential 'high level' barriers to incorporation:

Lack of leadership – If incorporation was to take place without sufficient political leadership, it could be perceived as pointless, as this will not lead to the prioritisation of housing and would become a meaningless right – potentially doing damage to wider discourse on human rights which the Welsh Government supports.

Investment in housing – While progressive realisation means there must be continued investment and prioritisation of housing, a lack of investment in housing would render a right to housing would become meaningless.

Staff resources and skills – To ensure the right to adequate housing can be successfully delivered at a local level, there will need to be an increase in staffing resources, and in particular training for specialist skills which are essential to the planning and construction process.

International evidence

International evidence from Alma Economics has identified specific barriers (and how they may be overcome) which can act as a guide for Wales:

- i. Progressive realisation.* Moving to fulfilling a universal right to adequate housing is an aim that cannot be realised immediately given available resources. This is true for Wales now and was true also for all case studies at the point when those countries introduced forms of the right to adequate housing. “Progressive realisation” is the idea that governments should make continual progress toward the full realisation of a human right, taking deliberate steps both immediately and in future. This is the feasible path for countries introducing the right to adequate housing. Finland leads the way in providing a roadmap for progressive realisation. Since the right to adequate housing was introduced in their constitution 21 years ago, there has been a continual but gradual improvement with significant increases in housing supply and putting Finland on track to end homelessness by 2027.
- ii. Governance.* Mechanisms are key to progressive realisation of the right to adequate housing and there are lessons to learn on governance from various jurisdictions: In Finland, economic, social, and cultural rights are enacted through laws, which are assessed beforehand by the Constitutional Law Committee of Parliament before they are passed and are considered justiciable by the courts. This includes policy changes affecting the right to adequate housing. In Canada, alongside the introduction of the right to adequate housing, three accountability bodies were introduced to monitor, promote, and protect the right. The Canadian model is unique; however, it is recent, and we could not identify evidence on its effectiveness. The absence of suitable governance mechanisms is key to the lower rates of progress made in France and Spain. A structure in which new law-making does not cause reductions in the right to adequate housing is key to ensuring progressive realisation.
- iii. Housing supply.* Increasing housing supply and improving the adequacy of the existing stock are key to progressive realisation. This is the key driver in the difference between the highly successful outcomes that Finland has achieved over time relative to countries such as South Africa, which have similar levels of legal ambition coupled with lower levels of resources to increase the stock of adequate housing, primarily due to South Africa being a less economically developed country. To achieve these improvements in housing supply and the adequacy of the existing stock, new investment is required. This could come from the private and the public sector. **The concept of progressive realisation is key here**, rather than meaning it’s impossible to proceed until you have the supply of homes, the legal obligations of the right drive the right homes as part of the pathway to fulfilling the right.

Q3. Research has shown there are multiple options around incorporation. Do you have a favoured option of incorporation? Are there any particular advantages or disadvantages of different models? What considerations should the Welsh Government have over time based on this right to ensure that it is fulfilled?

Human rights, incorporation, and enforcement

Human rights protect individuals and social groups from unjustifiable interference from the state and guarantees everyone a basic level of entitlement in vital areas of public service provision – including housing. The United Kingdom (UK) is party to seven United Nations (UN) human rights treaties. These include the Covenant on Economic, Social and Cultural Rights (CESCR) which guarantees rights to social conditions such as employment and decent working conditions, health and social care, social insurance, education, and an adequate standard of living. The CESCR also guarantees the right to adequate housing.

A number of UN-established treaty monitoring bodies, which monitor international compliance with human rights treaties, made recommendations to incorporate human rights treaties in national laws. Incorporation can be direct, indirect, or sectoral (referred to below).

Why and how Wales should incorporate into law

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

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

The loss of rights guaranteed by the Charter of Fundamental Rights of the European Union following Brexit has given new impetus to calls for further incorporation of human rights in Wales. Social rights are the human rights that relate most closely to the competencies of the Senedd and the Welsh Government, with potential to provide a guiding framework for the conduct of policy and legislation in devolved areas. Importantly, although Senedd Cymru doesn't have competency to enter international human rights treaties (this is done at a UK level), it *DOES* have the power to observe

and implement them, including the ICESCR and the right to adequate housing. It is an option available to Ministers to introduce legislation for enactment by the Senedd Cymru for the purpose of giving effect to (observing and implementing) human rights treaties to which the UK is already a State party, to include the ICESCR or the right to adequate housing as a distinct right.

International examples of incorporation

In 2021, we commissioned Alma Economics to independently undertake two phases of research. In December of that year, we published a report which laid out an international evidence base on incorporation of the right to adequate housing. This fundamental human right is incorporated in legislation in countries such as South Africa and Canada and in the constitutions of other countries such as Finland. More recently, Scotland has been taking steps toward introducing this right in national legislation to ensure its progressive realisation and enforcement. Scotland is currently in the process of drafting a Bill which will, amongst others, provide for the right to housing.

International examples of incorporation

Our research referred specifically to:

- *South Africa*, where the right is justiciable but there is little investment in housing supply.
- *Canada*, where there is a focus on governance and where legislation has created three accountability bodies. However, despite progressive realisation, the right is not yet justiciable – although citizens can access other mechanisms to ensure their right. The system in Canada is unique and relatively ‘new’, therefore effectiveness to date is difficult to judge.
- *Finland*, where significant progress is being made. The right to housing, alongside other economic, social, and cultural rights, is part of the Finnish Constitution. Economic, social, and cultural rights are enacted through laws, which are assessed beforehand by the Constitutional Law Committee of Parliament before they are passed and are considered justiciable by the courts. Finland has also adopted the Housing First model, an international exemplar that focusses on ensuring homeless people have access to housing and is based on the theory that any other issues would be addressed once housing is obtained. This has been implemented in Finland in the form of national programmes and those programmes have been effective in reducing long-term homelessness.
- Reference is also made to *Scotland*, which has a statutorily enforceable entitlement to housing and is taking steps toward introducing an enforceable right to adequate housing in its legislation, through direct incorporation of the Covenant. Scotland’s success in reducing homelessness depends on government investment and social housing supply. The Scottish case highlights that, to fulfil a housing related right, it is essential to combine a legally enforceable right with broad political commitment to ensure that this right is fulfilled under difficult budgetary conditions.

Recommendation - Welsh Government undertakes further work as to how the right to adequate housing can be incorporated, exploring lessons from other countries.

Q4. Progressive realisation is a legal instrument adopted to incorporate the right to adequate housing. It means using the maximum available resources over time based on a robust strategy and no regression. What are the factors that the Welsh Government need to consider to progressively realise the right to adequate housing? What opportunities does it present? Would a sunrise clause in legislation be necessary?

Our response thus far has already outlined a definition of progressive realisation. However, it's necessary to explore further how this could help the Welsh Government deliver a right to adequate housing in practice.

The opportunities of Progressive realisation

No 'overnight' change – Progressive realisation means there is no immediate 'overnight' change benefitting Welsh Government, local authorities, and housing associations. Rather, it means there is a longer timeline for all stakeholders to work together and plan for change.

Long-term Commitment – Progressive realisation means a long-term commitment for change, lasting beyond individual governments, for achieving the change required to provide adequate housing. This allows for more joined up policy making and strategy, as well as consistency for all stakeholders, including landlords and developers.

No immediate litigation – Progressive realisation means as long as the Welsh Government is following the process of committing the maximum available resources and not regressing, the likelihood of litigation is limited. Equally, for local authorities as long as they can evidence the direction of travel and investment, the likelihood of litigation is limited in the early days for them too.

Sunrise clause – In order to provide maximum protection for Welsh Government and local authorities, a sunrise clause may be inserted in the Act. Combined with Progressive Realisation, this prevents early legal challenge.

Q5. The Well-being of Future Generations Act seeks to transform and improve our environment, economy, society, and culture. What opportunities are there for the right to adequate housing to support and contribute to the WBFGA and help us deliver for future generations?

Complementing the Future Generations and Wellbeing Act

The right to adequate housing is well aligned to the Well-being of Future Generations Act. The UN Committee has published guidance on the relationship between international Social Development Goals (SDGs) and human rights in the ICESCR.⁶³ This guidance makes it clear that human rights underpin sustainable development and can provide a framework for working toward achievement of SDGs in practice. Our [feasibility report](#) identified the right would introduce an underpinning for wellbeing goals in the field of housing, and the obligations that accompany the right to adequate housing would provide a framework for achievement, measurement and accountability for the well-being goals through housing policy.

We feel a right to adequate housing would make the following positive contributions to the wellbeing goals:

- [A Prosperous Wales](#) – Our independent cost-benefit analysis highlights educational and economic benefits (up to £1 billion over 30 years) of incorporation. It will also require low-carbon homes and houses to be built in a suitable location for work, amenities, and services, raising potential to align it with the 20-minute neighbourhood concept.
- [A Resilient Wales](#) – Participation in decision-making can help protect and ensure access to the natural environment for future housing developments. Greener construction methods could also help ensure cleaner rivers and promote our ecosystems.
- [A more equal Wales](#) – Providing everyone with a legal right to a home will help tackle poverty through preventing homelessness and ensuring people live in homes they can afford. Inequalities will be reduced by ensuring more accessible homes and more homes meet the needs of all our diverse communities in Wales, whether larger multigenerational homes or improved sites for Gypsy, Roma, and Traveller communities for example A good home is a foundation that will help unlock everyone’s potential towards a more equal Wales.
- [A Healthier Wales](#) – Given the recent and well publicised interest in the link between poor housing and health, positive benefits will be realised through preventing poor health associated with living conditions. Our cost-benefit analysis identified wellbeing benefits of £5.5bn through sustained improvements in physical and mental wellbeing, and a cautious estimate of £1bn savings to the NHS in Wales based on limited exploration of health benefits, and which our commissioned (independent) researchers note could be much higher in reality.

- A Wales of Cohesive Communities – Participation in planning and decision-making will be increased, while the right to adequate housing will also ensure homes are built near services relating to social and employment opportunities. Our cost-benefit analysis also highlights savings of £1bn through reduced crime and safer communities.
- A Wales of Vibrant Culture and Thriving Welsh Language – The right to adequate housing offers opportunities to protect, preserve and grow Welsh Language communities by ensuring participation in decision making and planning, ensuring people have a right to a home in their community and their cultural needs are met.
- A Globally Responsible Wales – Our research has identified that Wales has the opportunity to lead the way globally in incorporating the right to housing.

Re-enforcing the Well-being of Future Generations Act

The synergy between the right to adequate housing and the Well-being of Future Generations is clearly demonstrable. An additional benefit of incorporation would be to place additional duties to deliver these benefits, ensuring the two pieces of legislation re-enforced each other.

Recommendation – Welsh Government investigate how the right to adequate housing can support the Wellbeing of Future Generations.

Q6. The Right to adequate housing asks to focus on the most marginalised and includes a principle of non-discrimination and equality. What would the benefits of this approach achieve?

“We’re expected to be grateful for a bad home.” Workshop participant.

“People are meant to be grateful for accepting poor housing. Damp, nobody is helping me, reporting to council they are not taking me seriously.” Workshop participant.

Discrimination is one of the biggest barriers to fulfilling the right to adequate housing. This report by the Special Rapporteur on the right to adequate housing highlights how the 7 factors of adequacy can be affected by discrimination and which groups are particularly affected.

The same report identifies the following groups who are particularly affected by housing discrimination and therefore may benefit in particular from the right to adequate housing:

- Disabled people – increased vulnerability to homelessness, deprivation of choice, lack of accessible and affordable housing – including in the social housing sector.
- Migrants and refugees – Barriers included accessing housing (social and private), increased risk of exposure to violence, forced evictions and overcrowding.

- Women and gender discrimination – access to the private rental sector, increased risk of homelessness and inadequate housing conditions.
- Racial and ethnic minorities – A primary driver of housing discrimination, this includes access to social housing, location, and quality of homes as well as racial stereotypes and bias.

Other groups who may be particularly affected by poor housing or inadequate supply in Wales include:

Gypsy, Roma and Travellers who often face discrimination in a way similar to some black and minoritised groups, including overcrowding, lack of or poor location of sites and access to services.

Households living in poverty may be pushed into poor housing and suffer from overcrowding, poor health and worse outcomes for children.

Single people, and in particular those leaving care and institutions due to a suitable and affordable supply.

The cost-of-living crisis has affected all groups in society, but in particular those above. It's highlighted that households that are affected by poor housing can be the most vulnerable in society for instance due to inadequately insulated homes and higher energy bills.

Taking action

Given these groups, it's clear that incorporation of the right to adequate housing would support a number of cross cutting Welsh Government policies and goals that are in the current Programme for Government. These include The Anti-Racist Wales Action Plan, Advancing Gender Equality Action Plan, as well as commitments to incorporate the United Nations Convention for the Elimination of all forms of Discrimination against Women and the UN Convention on the Rights of Disabled People into Welsh law.

The rights of the child and child poverty

Article 27 of the UN rights of the child references *“parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”* Clearly, health, educational advancement and well-being are influenced by the quality of housing in which children live. The right to adequate housing can support the fulfilment of the rights of the child, which the Welsh Government has already incorporated. The right to adequate housing would also support initiatives to address Child Poverty, and thus contribute to the upcoming Welsh Government strategy.

According to the previously mentioned report by the UN Special Rapporteur, it is essential states protect against discrimination by providing an *“effective investigation into allegations of housing discrimination by independent bodies, and meaningful avenues to ensure compensation and guarantees of non-repetition for victims.”*

To ensure all groups (but in particular groups most affected by housing discrimination, the Welsh Government could look at:

Non-judicial mechanisms - Ombudspersons, non-discrimination and equality bodies at the local and national levels, legal departments of tenant unions, and national human rights institutions should play an important role in addressing various forms of housing discrimination.

Judicial mechanisms - Ultimately, it is also essential that victims of housing discrimination are able to seek justice through the formal judicial system. However, even in countries that have well-established anti-discrimination legislation, courts have not heard many cases relating to housing discrimination.

Recommendation – More work is undertaken on the right to adequate housing and how it can support existing Welsh Government strategies and goals beyond housing.

Q7. Participation is a core aspect of taking a human rights approach. How can we best embed participation in implementation of the RTAH?

As detailed earlier in this response, meaningful participation is an integral part of the right to adequate housing. Given some of the challenges the Welsh Government have experienced engaging private tenants as part of this consultation, it's essential plans for undertaking this are well considered. Examples of participation include:

Canada has introduced a National Housing Council. The National Housing Council is an advisory body that promotes participation and inclusion in the development of housing policy. It contributes to the success of the National Housing Strategy with the aim of improving housing outcomes for everyone in Canada.

The Council brings together committed, diverse and expert group members from across Canada. They will advise the Minister on housing issues in Canada and the effectiveness of the National Housing Strategy.

Scotland's consultation on incorporating a Human Rights Bill raises a number of suggestions in this area. A Lived Experience Board was established to participate in the development of the consultation paper and recommendations. As one member of the Board stated, *"People's lives are very significantly impacted by discrimination against women and discrimination against disabled people, but you need to have equal access to information and ways to address that, not only for people who can shout louder or are in the public eye."*

Based on the above, it's worth reflecting how meaningful participation in the future development of this policy can be explored, and adequately resourced. As a practical example, given the higher proportion of disabled people living in social housing, this

could include participation in what future social housing needs to look like to ensure it meets people's needs.

Recommendation – Opportunities to involve people in the implementation and development of the right to adequate housing are explored.

Q8. What are the benefits for legislation that makes human rights justiciable based on the International Covenant of Economic, Social and Cultural rights? (UN General Comment 3)

The benefits of incorporation based on our draft bill are as follows:

- Homelessness: ensuring we build on some of the measures taken during the COVID-19 crisis, including maximising investment in social housing supply and support.
- Security of tenure: strengthening the position of Welsh Government in its rights-based approach, better balancing the rights of tenants to live in security with those of private landlords.
- Accessible housing: ensuring proper consideration of disabled people's rights in a housing context, giving them a voice to have those rights recognised and, if needed, enforced
- Black, Asian and minority ethnic people, young people and other minority or disadvantaged groups' access to affordable housing: where local authorities would need to consider the needs of particularly disadvantaged groups in the development of local strategies and the supply of affordable homes.
- Resource: will push housing up the policy priority list and in turn ensure increased focus of resource and investment, tackling the chronic under-supply of housing as well as support services.

In the previous question, we have identified how certain groups suffer from housing discrimination will benefit (and how they may achieve that).

Q9. What are the advantages of making rights part of the domestic legal order? (UN General Comment 9)

Incorporation means the right to adequate housing can be relied on as a bedrock from which individuals and organisations could advocate for policies and practices to give effect to the RAH through implementation. It can act as an 'upstream' influence on policy making, in the same way as other rights introduced by the Welsh Government, i.e. The UN rights of the Child. It also means that there is a commitment which goes beyond any particular Government, ensuring consistency for the housing sector and individuals in society have enhanced rights and holding government to account.

4. Conclusion and Recommendations

Wales, as the rest of the UK, is in the midst of one of the deepest and far-reaching housing crises that we have seen in modern times: a crisis which is having a profound impact on the very fabric of our society – from homelessness and temporary accommodation to poor quality and unsuitable housing conditions. As a society, we need to move beyond the moral consensus on a right to housing – which has not delivered the change we need - to the systematic action to address the housing emergency that a legal right would drive.

This Green Paper is an important part of this journey, and we welcome the Welsh Government's commitment to look at incorporation. Because this is such an important part of the journey, it's necessary to reflect on some of the weaknesses of the Green Paper. Evidence gaps and misunderstandings about the concept and purpose of an overarching right to adequate housing, make progress much harder and undermine the Programme for Government commitment for a White Paper into the right to adequate housing, which is robust.

In our response, we've sought to highlight some of the areas we feel are missing from this consultation. These range from a misunderstanding of human rights legislation to progressive realisation and how incorporation could work, right through to the benefits of incorporation for particular communities and how it can promote equality.

The Back the Bill campaign was born partly in response to the Grenfell Disaster. The moral justification for this campaign is evident and supported by a majority of the population. Since 2019, we've built the evidence base substantially, including a draft bill, a feasibility report, insights into housing inequality and international lessons learnt, as well as an independent cost-benefit analysis. We want to continue to work with the Welsh Government to use these insights and develop a strong evidence based White Paper.

We understand the Minister's fear that changes need to be made before incorporation, or a human right to housing would be worthless. Respectfully, we disagree and believe this response goes some way to mitigating those fears. Indeed, we see incorporation as the driver of change and without it, little will change – particularly in an austere financial context.

Taking an analogy from the NHS, which has recently celebrated its 75th birthday. After the Second World War, money was scant, and the population had considerable health problems. But the Labour Government didn't wait to build new hospitals, recruit doctors and nurses before it established the health service. It was the establishment of the health service that drove the hospitals and staff training and recruitment. Given the scale of the housing crisis in Wales today, we feel this is an apt lesson from history.

Back the Bill partners remain committed to working positively and constructively with Welsh Government and other key stakeholders through continued open dialogue. Working together, we can ensure that over time, everyone can have a home that is safe, secure, suited to their needs and that they can afford.

Here is a list of our recommendations for the Green Paper:

- **Welsh Government engages with experts to reflect on their approach to human rights and the right to adequate housing to inform its framing of the forthcoming White Paper.**
- **Welsh Government undertake work to understand how the right to adequate housing can tackle inequalities in Wales.**
- **Welsh Government recognises right to adequate housing as an obligation to fulfil through incorporation rather than an aspiration to strive towards.**
- **Welsh Government engages with experts to focus on progressive realisation (including the link to minimum core), to understand how incorporation can work in Wales, and to reflect on the role of progressive realisation as a key driver of change in the forthcoming White Paper**
- **Welsh Government reviews the Back the Bill campaigns Draft Bill as a starting point for incorporation, recognising the support it has across the housing sector. Further work is also undertaken to consider what mechanisms are needed to ensure a right to adequate housing can be implemented and monitored.**
- **Welsh Government explores the full potential of the right to adequate housing and the benefits it can bring to housing and other policy areas**
- **Welsh Government undertakes further work as to how the right to adequate housing can be incorporated, exploring lessons from other countries.**
- **Welsh Government investigate how the right to adequate housing can support the Wellbeing of Future Generations.**
- **More work is done on the right to adequate housing and how it can support existing Welsh Government strategies and goals beyond housing.**
- **Opportunities to involve people in the implementation and development of the right to adequate housing are explored.**

Annex A - ABOUT THE PARTNER ORGANISATIONS

Tai Pawb works to advance equality and social justice in housing in Wales. We imagine a Wales where everyone has the right to a good home | www.taipawb.org

CIH Cymru supports housing professionals to create a future in which everyone has a place to call home. We're the professional body for people who work in housing, the independent voice for housing and the home of professional standards | www.cih.org

Shelter Cymru exists to defend the right to a safe home. We help thousands of people each year in Wales by offering free, independent advice | www.sheltercymru.org