

RHA 12
Bil Rhentu Cartrefi (Diwygio) (Cymru)
Renting Homes (Amendment) (Wales) Bill
Ymateb gan: Sefydliad Tai Siartredig Cymru
Response from: Chartered Institute of Housing Cymru

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**Chartered
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Cymru

Renting homes (Amendment) (Wales) Bill

CIH Cymru consultation response

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: www.cih.org

In Wales, we aim to provide a professional and impartial voice for housing across all sectors to emphasise the particular context of housing in Wales and to work with organisations to identify housing solutions.

General Comments

CIH Cymru welcomes the opportunity to provide evidence on the Renting Homes (Amendment) (Wales) Bill.

Our response is informed by feedback from our members, our knowledge of the housing industry and expertise from our policy and practice teams.

CIH Cymru supports the development of Welsh policies, practices and legislation that aim to address the key housing challenges we face, to improve standards and supply, promote community cohesion, tackle poverty and promote equality. We promote a *one housing system* approach that:

- places the delivery of additional affordable housing at the top of national, regional and local strategies as a primary method of tackling the housing crisis;
- secures investment to ensure the high and sustainable quality of all homes in a sustainable framework;
- improves standards and develops the consumer voice within the private rented sector
- promotes the concept of housing led regeneration to capture the added value that housing brings in terms of economic, social and environmental outcomes;
- recognises that meeting the housing needs of our communities is a key aspect of tackling inequality and poverty;
- ensures that that there are properly resourced support services in place to prevent homelessness and protect the most vulnerable;
- uses current and potential legislative and financial powers to intervene in housing markets and benefit schemes;
- promotes consumer rights & tenant involvement;
- and supports the continued professional development of housing practitioners.

1. Introduction

- 1.1 Whether renting a home in the social or private sector we believe that people in Wales should expect consistency, fairness and equality in accessing and living in rented accommodation. We welcome this opportunity to provide evidence to the committee as it considers the Renting Homes (Amendment) (Wales) Bill which places a minimum notice period before which landlords can issue a notice of possession under section 173 from two to six months and in effect provides up to 12 months of security for new tenants entering into standard occupation contracts.
- 1.2 Increasing the security of tenure also supports our own call, alongside Tai Pawb and Shelter Cymru to see the right to adequate housing fully enshrined in Welsh legislation. We have included the executive summary of this research as a separate piece of evidence to the committee.

2. Purpose of the legislation

- 2.1 Renting a home in Wales is a vital part of the housing ecosystem and increasingly is the tenure of choice for a wide range of people. The nature of the housing market is changing rapidly as house prices increase and intergenerational equity deteriorates with homeownership becoming increasingly difficult for younger people. The private rented sector houses a wide variety of people and for some specific groups such as families with children and older people, increasing tenancy security remains an issue of high importance.
- 2.2 Looking further afield, the shape of renting across Europe varies significantly and we believe it is important to recognise what the right investment in renting can achieve in terms of both the standard of homes and the experiences of tenants. In both Switzerland and Germany tenant households are more common than owner occupier households. This has led to a much greater quality of housing stock and stability across the entire market in these countries. The latest OECD figures reflect that the share of people in the bottom quintile of income distribution spending more than 40% of their disposable income on rent stood at 13 per cent and 29.1 per cent for Germany and Switzerland respectively, whilst for the United Kingdom, the same figure stood at 59.2 per cent.¹
- 2.3 Whilst there are other factors involved we believe that the prominence of the rental market as part of the overall spectrum of housing options is at a point where increasing the security of tenure is timely and the right thing to do.

3. General principles

Extending the minimum notice period for a s.173

- 3.1 We agree with the logic that providing all tenants with a virtual minimum one-year occupation period would be a step in the right direction to increase security of tenure. This measure is more compatible with our desire to see greater security of tenure

¹ <http://www.oecd.org/social/affordable-housing-database.htm> (Accessed 02/09/2018).

across the housing sector. As an organisation we advocate for a one housing system approach to developing, delivering and managing homes in Wales. In practice, we believe this means that whether renting or buying everyone should have the right to access a safe, affordable, suitable place to call home.

- 3.2 We would not however wish to see any unintended consequences that undermine the ability of landlords to act swiftly in cases of domestic abuse/violence, community safety and anti-social behaviour and careful monitoring would need to be established to glean the experience of both tenants and landlords. And there are clear systemic issues, such as the judicial process, that we go on to highlight that often make s.173 the preferred method of gaining possession of a property – it is vital these are addressed in full to ensure the legislation works as intended without severely impeding the viability of landlords to operate.

Time restrictions on issuing a s.173

- 3.3 Scenarios where tenants feel they always have an eviction notice active is clearly undesirable. Further to this, it would clearly be poor housing management practice to re-issue a section 173 every six months and would undoubtedly further harm relations between landlords and tenants alike.
- 3.4 We believe that whilst the six-month notice provides greater security for tenants there should be clear trigger points that prompt opportunities to provide support/advice and information to tenants and landlords that could prevent the need for the tenancy to end. It is telling from the Welsh Government's summary of responses to its own consultation on this topic that one of the primary reasons for using s.173 was due to rent arrears. We are concerned that opportunities to prevent tenancies ending and providing timely support to both tenants and landlords are being missed.
- 3.5 Rent arrears can be an indicator of a wide variety of issues, including domestic abuse/coercive control, financial difficulty and problems accessing welfare benefits. For example, research by Citizens Advice suggested Universal Credit claimants are six times more likely to fall into rent arrears. Combined with the challenges private landlords have in engaging with the Universal Credit system, these combine to nurture circumstances where rent arrears are increasingly likely, placing strain on tenants and placing private landlords in difficult situations. The ongoing difficulty linked to welfare reform increases the risk of tenancies continuing to fail as a result of unaffordability regardless of the existence of the proposed measures.
- 3.6 There are numerous examples across Wales from both the social housing sector and the PRS sector alike where landlords have developed approaches to housing management that seek to greatly reduce or negate the need for eviction all together. This has included measures such as:
- Pre-tenancy assessments and links to support where need is identified.
 - Regular engagement with tenants to strengthen relationships with landlords.
 - Exploring the causes behind rent arrears and working with tenants to provide support/advice.
 - Sign-posting tenants to supporting people services for ongoing support, advice and information.

- 3.7 We believe there is a strong case for sharing practice between landlords working in the social housing sector and the PRS as the principles underpinning some of the most successful approaches are universally applicable. There is additional information linked to this in section 4.5 of this response.

Use of break clauses

- 3.8 We recognise that while many tenants need more security, landlords do have concerns that longer tenancies could expose them to a greater level of risk around rent arrears. It is essential that government seeks to strike a reasonable balance between these two needs.
- 3.9 As noted elsewhere in our response, landlords' concerns could be mitigated to some extent by making improvements to the system for considering possession cases (this needs to operate much more quickly and efficiently than is currently the case) and by reconsidering a number of welfare cuts which greatly affect tenants' ability to pay their rent.
- 3.10 We are aware of little evidence at present that the use of break clauses is a widespread practice by landlords across Wales, but in light of the purpose of this legislation we recognise the need to consider the knock-on impact on their potential use in the future. We are in favour of seeing these specified or limited in their number through the legislation in order to strike a balance between offering choice and flexibility to tenants and landlords whilst ensuring their use does not undermine the main purpose of the legislation. This should be accompanied by robust monitoring mechanisms to grow a picture of their use.

Retaliatory evictions

- 3.11 We recognise that the majority of landlords are proactive and responsible in their efforts to improve the quality of their home(s) and respond to the request of tenants for repairs and ongoing maintenance. In circumstances where a court believes that a s.173 has been issued in order to avoid a landlord's usual obligations to managing a home to an acceptable standard, we believe there should be implications for that landlord's licence and fitness to practice. The impact of such practices has a negative effect on the reputation on those landlords operating in an ethical and responsible fashion.
- 3.12 It is important that ongoing evidence gathering builds a clearer picture of the extent of this issue. It seems that with the threshold for considering evidence for an eviction being retaliatory in its nature sitting at the county court level, there is a risk that the legitimate concerns of tenants that go unattended remain invisible.

4. Potential barriers

Addressing capacity in the court system

- 4.1 The consultation rightly raises legitimate concerns over the use of section 173 notices, highlighting that their use is sometimes the result of landlords being aware that this can often be the quickest route to possession. We share the view that this is in part driven by a lack of capacity in the county court system, which in Wales has seen considerable cuts in terms of resources in recent years.
- 4.2 In a UK-wide consultation from the UK Government seeking views on developing a housing court we highlighted the following points that we believe remain relevant to the discussion in a Wales context. It is clear that users of the current county court system, both social and private landlords alike, experience a number of difficulties including:
- the time taken for cases to be resolved, with landlords particularly telling us about lengthy delays at various stages of the possession process
 - significant inconsistencies in both processes and timescales between different county courts. These inconsistencies can create difficulties for larger landlords who operate across many different areas
 - a lack of understanding about court processes and procedures.
- 4.3 While most social landlords are experienced users of the legal system this is not necessarily the case for private landlords, for whom being a landlord is often a small scale, part time exercise. Navigating the legal system can be complex and this is exacerbated by inconsistencies between courts in different areas.
- 4.4 Furthermore, feedback from our members also suggests that tenants often do not know what to expect from the court system and we are concerned that a lack of understanding of processes and procedures may sometimes inhibit their ability to exercise their rights effectively.

Increasing support for tenants and landlords in the PRS

- 4.5 We share the belief that eviction should be treated as an absolute last resort for landlords and wherever possible action should be taken to negate the need to pursue possession action. In research conducted through our Tyfu Tai Cymru project and in partnership with Tai Pawb we explored the situation facing people living with mental health issues in the private rented sector.

The report found that:

- One in three support organisations feel there is ‘never’ enough mental health support for tenants renting privately
- 62 per cent of landlords have had, or currently have a tenant with a mental health problem

- Almost half of private landlords felt they ‘never’ had enough support or information to support tenants living with mental health problems
- There are suggestions that people with mental health problems sometimes face discrimination when trying to access private rented sector housing
- Private landlords told us that the solution to the problems are straightforward; that there should be better advice available online for what landlords and tenants can do to access support.

4.6 CIH Cymru makes the following recommendations:

- Welsh Government to provide comprehensive information for private rented sector landlords and letting agents regarding local and national mental health support
- Relicensing through Rent Smart Wales should require all private sector landlords to complete a module on mental health to improve their knowledge of how to access support for tenants with mental health problems.
- Local authorities should develop crisis/emergency housing-related support services for people with mental health problems in the private rented sector to support tenants to stay in their own homes
- Services should be shaped and delivered with the expertise and insights of tenants living with mental health problems in the private rented sector

4.7 Worryingly, the research found that those landlords who had had a negative experience when a tenant had a mental health issue did not feel confident in renting to tenants with mental health issues in the future. We welcomed Welsh Government’s acceptance of these findings and the report’s recommendations but note that the need to continually monitor support in this framing is of utmost importance.

Communication and readiness

4.8 As a piece of legislation which will primarily impact the private rented sector it is important to consider full awareness raising activity of any changes as well as fair lead-in times to address concerns and undertake any mitigating action.

4.9 As the private rented sector continues its evolution in Wales underpinned by both the licencing scheme as well as changes to legislation and policy further changes may not be met with enthusiasm unless the right infrastructure of support is in place, and that resource promoted to landlords effectively.

The right to adequate housing in Wales:

Feasibility Report

Executive Summary

“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.**

“The law failed to protect the residents of Grenfell Tower. Even if legal aid had been available, the fact is that there was no legislation that would have given the court the power to intervene and stop the process that ultimately led to such dreadful loss of life. Only an enforceable right to adequate housing would have guaranteed the residents the ability to take their concerns to court, have their questions answered and the dangerous cladding removed before it was too late. It is time that the right to housing, long recognised in international law, is protected in law” – **Jamie Burton, Doughty Street Chambers lawyer who acted for various bereaved, survivors and residents in Phase 1 of the Grenfell Tower Inquiry.**

Authored by: **Dr Simon Hoffman (Swansea University) for Tai Pawb, the Chartered Institute of Housing Cymru and Shelter Cymru**

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Context

In the early hours of 14 June, 2017, a fire engulfed the 24-storey Grenfell Tower block of flats in North Kensington, West London.

It claimed the lives of 72 people.

Grenfell came to represent how we have failed those 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.

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.

As a society, therefore, how much of a priority do we want to place on housing in order to ensure universal access to that most basic of human rights - a safe, secure and affordable place that we can call home.

We believe that at the core of any solution to the housing crisis must be

a national commitment to the fundamental principle that every one of us should have a human right, underpinned by law, to access adequate and sustainable housing. We need a vision and a legal framework that would help us shift the paradigm of the way housing is understood – namely as being central to the dignity of every person.

A big part of that process should be, in our view, embedding into Welsh legislation, the Right to Adequate Housing as outlined in ICESCR (International Covenant on Economic, Social and Cultural Rights).

We believe that the report makes for a compelling case for the incorporation of the Right to Adequate Housing into Welsh law, whilst also clearly setting out the route map for how we get there.

We believe that the dual approach option set out in Section C is the best way forward but it's now over to you, our representatives in Wales' Parliament.

Only you can deliver on that promise to ensure that all of us in Wales, no matter what our background or our personal and financial circumstance, have a legal right to a place to call home.

The Housing Crisis in Wales



60,589
households on social
housing waiting list
(Shelter Cymru - March 2018)

Over

21,000
households faced
or experienced
homelessness in 2018
(Statistics Wales)

1 out of 22

local authorities has accessible
housing building target
(Statistics Wales)



2,139

households in temporary
accommodation - of
which 837 are families
with children.
(Statistics Wales - March 2019)

347

people sleeping rough
on our streets
(Statistics Wales - Feb 2019)



42%

1/3

Only one third of us
happy living near social
housing
(Tyfu Tai Public Perceptions
Survey April 2018)

of private tenants do
not have a fixed term
tenancy in Wales
(Shelter Cymru - Feb 2018)



Key points from the Report

Human rights, incorporation and enforcement

Human rights protect individuals and social groups from unjustifiable interference from the state and guarantee 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.¹ These include the Covenant on Economic, Social and Cultural Rights (CESCR)² 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.³

Incorporation can be direct, indirect or sectoral.

Direct incorporation means transforming the human rights treaty into domestic law, as in the case of the

Human Rights Act. Direct incorporation usually means that individuals can use human rights to seek justice in a British court.

Indirect incorporation usually means that governments and authorities have to take some account of human rights treaties but are not fully bound by them. An example of indirect incorporation in the UK is the Rights of Children and Young Persons (Wales) Measure 2011 (the Child Rights Measure) where Welsh ministers have to pay due regard to an international treaty. Governments can still be challenged in court, but the remedies will not be as strong as in the case of direct incorporation.

Sectoral incorporation usually means that rights set out in the human rights treaty are referred to and encapsulated in legislation in a specific policy area, e.g. education, or housing. The courts may be given a role to enforce the right(s) concerned. An example of such incorporation is the Social Services (Wales) Act 2013 which requires ministers and authorities to pay due regard to specific human rights.

Incorporation matters because without it, human rights treaties which the state has ratified are no more than aspirational standards or 'dead letters'. Incorporation brings human rights into a national legal framework,

1. For a list of treaties signed and ratified by the UK see: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties>
2. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

3. For example: Committee on Economic, Social and Cultural Rights, General Comment No.9, 1998, The Domestic Application of the Covenant. Both are available from the treaty body section of the website of the office of the High Commissioner for Human Rights: <https://www.ohchr.org/EN/HRBodies/CESCR/pages/cescrindex.aspx>

insulating them from a political whim and embedding them into policy and law-making. Incorporation helps address the accountability gap between a government's human rights commitments and its actions. For example, although the UK government is considered to be breaching people's right to adequate housing (according to the UN), the UN has no power to enforce action.

Incorporation means governments and public authorities can be held accountable for their actions through a number of mechanisms including informal ones: public debate, complaints, human rights institutions, commissions and commissioners, National Assembly for Wales; and formal mechanisms: court-based accountability and judicial enforcement.

Incorporation may need to strike a balance between the role of the courts to protect rights, and the democratic mandate of politicians to make law and policy.

Judicial remedies are usually more accessible and likely to be more effective for individuals where there is direct incorporation, but it can have its limitations. Where there is indirect incorporation there is also scope for court-based accountability and judicial oversight, usually in the form of judicial review albeit that this is unlikely to be as strong as under direct incorporation.

The right to adequate housing

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. (Emphasis added.)'

The right to housing is accompanied by a general obligation to respect, protect and fulfil the right.

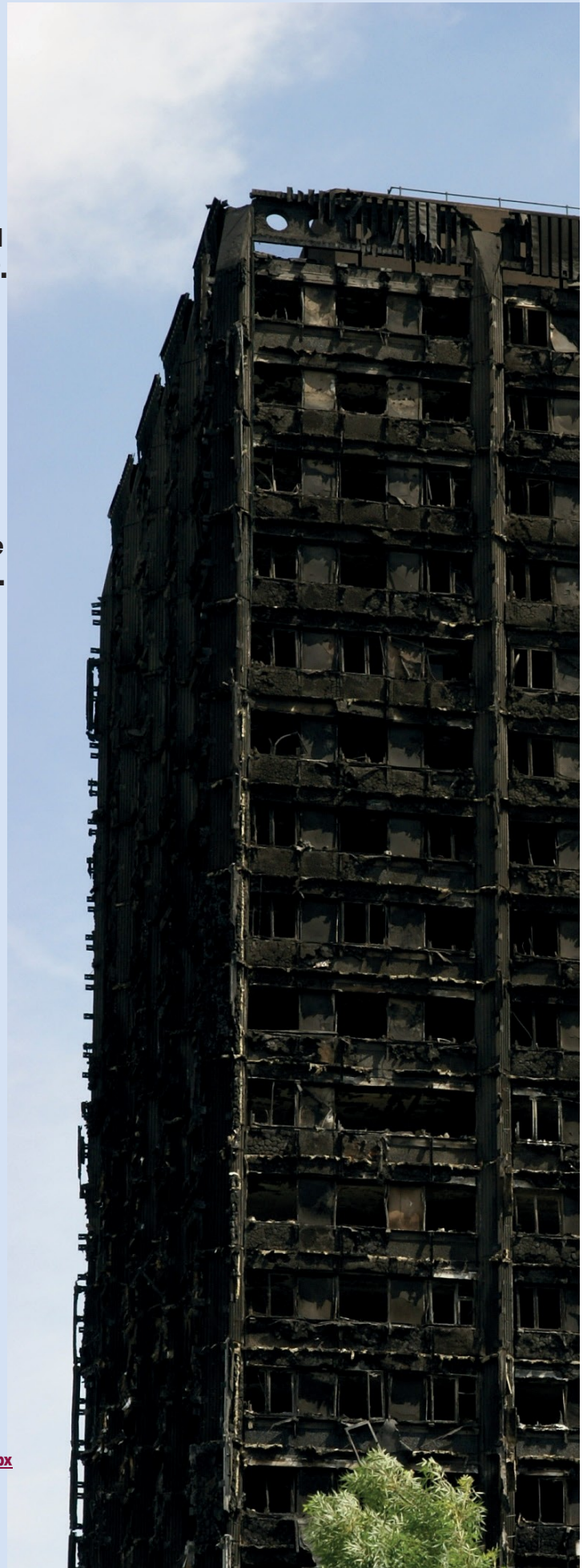
The right to housing may be fulfilled progressively, over time. This means that the government is required to make progress towards the fullest possible realisation of the right through the application of maximum available resources. This is called progressive realisation. ICESCR also immediately prohibits 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.

The UN committee further defines the right to adequate housing as a right to live in 'peace, security and dignity'. It recognises housing as going beyond a provision of shelter, often viewed as a commodity. It sees housing as being of fundamental importance to humanity.

There is a separate UN appointed Special Rapporteur on the Right to Adequate Housing⁴.

The UN Committee has identified several aspects of the right to adequate housing which ought to be addressed by law and policy, including: *legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy*. The committee further requires focus on those living in the most unfavourable conditions. It also requires that governments develop a rights based national housing strategy. Guidance on all of the above, based on international good practice, has been issued by the UN Committee and Special Rapporteur. The right to adequate housing does not require government to provide housing for all. Instead, housing policy should pursue 'enabling strategies' to help realise the right to adequate housing for everyone through a range of housing options.

4. <https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx>



Why and how should Wales incorporate the right to adequate housing

The UN Committee on Economic Social and Cultural Rights, responsible for monitoring the right to housing internationally, commented on the 'persistent critical situation' of housing in the UK and consistently recommended incorporation of international social rights including housing.⁵

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

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

standards required by the right to adequate housing.

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

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

Importantly, although the National Assembly for Wales 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 NAW for the purpose of giving effect to (observing and implementing) human rights treaties to which the UK is already a State party, to include the ICESCR or the right to adequate housing as a distinct right.

When considering how best to implement human rights in Wales, the report considers three options of incorporation – indirect (Option A), direct (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

5. Concluding Observations on the UK State Party, 2016, para. 49

6. For discussion see of the impact of Brexit on human rights see: Liberty UK, Bring Rights Home, What's at Stake for Human Rights in the Incorporation of EU Law After Brexit, available here: <https://www.libertyhumanrights.org.uk/sites/default/files/Bringing%20human%20rights%20home%20-%20Jan%202018.pdf>

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

7. The Children and Young Persons Commissioner for Scotland and Together for Children in Scotland have proposed a draft Children's Rights Bill to the Scottish Government adopting the dual approach. Information about the Bill is available here: <https://www.togetherscotland.org.uk/about-childrens-rights/monitoring-the-uncrc/incorporation-of-the-un-convention-on-the-rights-of-the-child/>