



THE RIGHT TO ADEQUATE HOUSING: ARE WE FOCUSING ON WHAT MATTERS?

**A DISCUSSION PAPER COMMISSIONED BY THE ASSOCIATION
OF LOCAL AUTHORITY CHIEF HOUSING OFFICERS**

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FOREWORD

The emergence of discussion around the human right to adequate housing has been one of the most positive and potentially exciting developments in housing policy in recent years. Plans to strengthen and formalise human rights, including the right to adequate and affordable housing, has the potential to reinforce the central role of housing in securing the dignity, security and well-being of each person. It also has the potential to establish new monitoring arrangements in place of existing approaches which tend to dehumanise housing policy and disconnect it from the needs and aspirations of different individuals and social groups.

Recent discussions on human rights and housing in Scotland have been very much filtered through a legal lens. This includes the rather dry and abstracted legalistic approach of the Expert Group on Human Rights Leadership and an unhelpful debate on whether a bottom up ‘rights-based approach’ to adequate housing should place relatively greater emphasis on enabling people to claim their rights or on ensuring public agencies meet their duties to provide services for specific households in certain situations.

What has been missing is any discussion on what we mean by ‘adequate housing’ in a Scottish context, how it might be applied in everyday practice and how implementation might be continuously strengthened to ensure progress towards the full realisation of adequate housing for everyone. ALACHO therefore commissioned this report to encourage discussion on:

- How we should understand adequate housing and the metrics that could be used to measure the extent to which it is being achieved;
- The practical challenges of developing a policy framework to support “progressive realisation”; and
- Data improvements needed to support well informed, transparent and publicly accountable decision making and subsequent monitoring.

In short, we are looking to move the discussion about the human right to adequate housing from a legal lens to a policy lens and to place it firmly in the field of policy, programme design and resource allocation. Ultimately, we believe these are decisions that cannot be left to lawyers or academics but must be located in public and political debate.

We have consciously described this report as a “can opener”. We are not suggesting that it is a definitive treatment of the subject or that the conclusions that it draws are the only ones available. The report seeks to use the process of defining “adequate housing” to explore the options available, the metrics that could be employed and the current state of the data that could be used to measure progress.

The report presents illustrative estimates for the numbers of households living in situations that may fall short on those aspects of adequate housing that we have been able to measure, however imperfectly. Aside from being the natural output from a data-driven exercise, these illustrative estimates, like the rest of the report, are intended to spark discussion.

In our view, the estimates show that our current approach to measuring housing need is too narrow and that we pay too little attention to the wide spectrum of unacceptable housing conditions many individuals and families currently experience. They also show that whilst it is the most extreme form of failing, homelessness is by no means the only human rights failing in terms of adequate housing.

The report highlights that in addition to the poor energy efficiency of many of our homes, there are challenges around defining housing standards and affordability, in understanding the extent of mental health impacts arising from inadequate housing and the extent to which people are trapped in unsuitable housing, including people with disabilities and those experiencing domestic abuse, linked to a lack of options to secure more appropriate, safe and affordable homes. There is also the practical problem of how best to effect change in a market-led system where over 75% of households live in the private sector. We believe that the conversation about these and other issues raised in this report needs to start sooner rather than later.

In seeking to kick start this conversation, we do not accept the idea that progress cannot be made until there is a fully comprehensive definition of adequate housing and accompanying outcome indicators have been agreed. For one thing, the progressive realisation of human rights means it will always be necessary to regularly revisit and refine the definition and accompanying priority actions. For another, progress on addressing issues central to the right to adequate housing is variable. Significant policy developments are already underway on issues like homelessness, housing quality standards and energy efficiency. On the other hand, progress on improving the affordability, accessibility and cultural adequacy of our homes remains slow. There are also question marks over the fairness and proportionality of possession ground in the private rented sector.

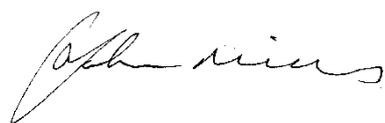
Acknowledgement

ALACHO would like to thank Gillian Young of Newhaven Research Scotland for the dedication and commitment she has shown in producing this report. We asked her to do this work because of her extensive experience in housing policy and statistical analysis, skills that have been missing in the debate around human rights and housing.

The report covered more ground and became more complicated than any of us expected, but she stuck to the task and, in particular, helped shape the brief, managed the mission creep that an over enthusiastic client can cause, and ensured that the final report is both comprehensive and focused. We are very grateful for all her efforts.

ALACHO and Newhaven Research Scotland would also like to thank the various Scottish Government statisticians who provided advice and data to support the preparation of this Report, and, in particular, Ailie Clarkson for providing data from the 2018 Scottish House Condition Survey, and for her prompt and helpful responses to various queries.

Newhaven Research Scotland would also like to thank Tony Cain for his clear commitment and enthusiasm for the study throughout in spite of the challenging circumstances we have all been living through.



John Kerr and John Mills

ALACHO Co-Chairs

June 2021

1. INTRODUCTION

PURPOSE OF REPORT

- 1.1 The right to adequate housing is embedded in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the UK signed and ratified in 1976. The question of how to evolve a human rights approach to housing has, however, only come to the fore of late.
- 1.2 Today it is increasingly understood that the lack of access to suitable, warm, affordable, secure and sustainable housing is a barrier to the Scottish Government's ambitions to secure a fairer, greener and stronger Scotland, to reduce socio-economic inequalities, and to enable people to realise their human rights and live in peace and dignity.
- 1.3 Since 2018, the Scottish Government's National Performance Framework has included an outcome to "*respect, protect and fulfil human rights and live free from discrimination*". The Scottish Government has also made a commitment to realise the right to adequate housing in *Housing to 2040*. It has accepted the recommendations of the National Taskforce for Human Rights Leadership (Taskforce) and plans to introduce a Bill to embed civil, political, economic, social, cultural and environmental human rights into Scots' law. This would complement the new Act which has just embedded the UN Rights of the Child in Scots' law.
- 1.4 Although the direction of travel is now clear, legislation alone is not sufficient. A great deal remains to be done to evolve and embed a common understanding of a human rights approach to housing policy and practice that is tailored to the Scottish housing system and enables everyone to realise these rights. One possible starting point is to look at how to translate the generalised concepts and principles of the right to adequate housing applied at international level into meaningful outcome indicators for Scotland that could help to:
 - Guide Scottish-wide policy on how best to turn the right to adequate housing into a set of concrete policies and actions.
 - Provide a foundation for developing a framework for monitoring whether Scotland's national and local governments and other bodies are taking sufficient steps, and devoting sufficient resources, to enable all sections of Scotland's population to realise their rights.
- 1.5 A similar approach was proposed at *World Conference on Human Rights 1993 in Vienna*, which argued that the use and analysis of indicators was vital for driving progress in human rights. This was reiterated by the Taskforce, which called for improved monitoring of outcomes in Scotland.
- 1.6 A variety of sometimes competing approaches to measuring progress on human rights now exist. This situation has come about because of differing interpretations of what should be measured, difficulties agreeing outcome indicators that can be applied in diverse settings, and data issues. Such challenges may help to explain why nearly three years on, Scotland's National Performance Framework has yet to include indicators for the human rights outcome.

- 1.7 Against this backdrop, ALACHO commissioned this report as a “can-opener” exercise to explore what outcome indicators for the right to adequate housing might help to place people's housing rights at the centre of Scottish housing policy and delivery, and which of these indicators could potentially be measured using existing data sources.
- 1.8 This desktop exercise was framed around the seven broad standards set by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) for the realisation of the ‘right to adequate housing’
- Tenure security
 - Habitability
 - Availability of services
 - Affordability
 - Accessibility
 - Location
 - Cultural adequacy
- 1.9 Building on this work, this paper addresses the following questions:
- What is the ‘right to adequate housing’ and what might be the benefits of adopting a human rights lens to housing?
 - What outcome indicators could potentially be used to measure each of the seven CESCR standards for adequate housing, and can they be measured at present?
 - What do the indicators that can be quantified, however imperfectly, tell us about the possible numbers of households that fall short of living in adequate housing?
 - What important data gaps exist and to what extent might they be addressed by modifying existing data collection systems?
- 1.10 We hope that this paper will stimulate dialogue around key questions, such as:
- What outcomes should a human rights approach to housing be framed around?
 - Is it possible to build a consensus as to what a manageable set of outcome indicators should look like?
 - What role should such outcome indicators play in the Scottish Government’s Housing and Regeneration Outcomes Framework, and for monitoring progress towards the full realisation of the right to adequate housing?
 - What role should such outcomes play in terms of how we assess housing needs and thus inform strategic planning and resource allocation decisions, both nationally and locally?
- 1.11 As a discussion paper, it is far from exhaustive. It focuses on the conditions people live in (objective indicators) rather than the ways people perceive the conditions that exist around them (subjective indicators). This reflects a combination of the study remit and data constraints. It is also one of the reasons why the indicators set out in this paper may not be the only possibilities or the most appropriate.
- 1.12 The paper does not discuss the formulation of a performance measurement framework that would bring together intermediate objectives, resource allocations and expenditure and service delivery to monitor progress towards these outcomes at national and local level across multiple bodies. Apart from the small-scale nature of the study, ALACHO wanted to focus on outcomes because:

- Agreeing outcome indicators can never be a purely technocratic exercise and is too important to settle hastily or without widespread and inclusive public dialogue.
- Whatever the final set of proposed outcome indicators, as they would set normative standards, they should be set through public and political discussion.
- A focus on desired outcomes would help to tease out current deficiencies in the availability and quality of data that would have to be addressed to progress a human rights approach to housing.

1.13 It is also important to stress that whilst outcome-based indicators have clear merits, they cannot paint a full picture. As such, they should never crowd or dominate other forms of evidence that can enhance understanding of the factors that shape progress towards the realisation of adequate housing. This includes the knowledge and expertise of housing experts and the lived experience of residents and communities.

PAPER STRUCTURE

1.14 Chapter 2 summarises the development and scope of human rights and in particular the right to adequate housing, the duties it places on the State and housing providers, the benefits of adopting a human rights approach to housing, and outlines the issues that guided the selection of outcome indicators. Chapter 3 explores the potential outcome indicators for each of the seven strands of the right to adequate housing and associated data availability and quality issues. Chapter 4 illustrates the baseline situation in terms of households at risk of not realising their 'right to adequate housing', and considers some overarching data matters. Finally, chapter 5 offers concluding observations.

2. HUMAN RIGHTS AND ADEQUATE HOUSING

THE RIGHT TO ADEQUATE HOUSING

2.1 Housing is vital to the ability of individuals to live in safety, peace and dignity. Without a settled home, other basic human needs and rights cannot be attained, including the right to family life, privacy, health and participation in civic society. The production and location of housing also shapes the environment, transport use, and economic growth. Consequently, housing has been integral to ‘the right to an adequate standard of living’ since the UN General Assembly adopted the 1948 Universal Declaration of Human Rights (UDHR):

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." UDHR Article 25

2.2 The UDHR is not legally binding but housing rights have been included in binding UN treaties, such as those relating to the rights of women, children, disabled people and ethnic minorities. The most important articulation, however, is set out in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which the UK has been party to since 1976¹. It recognises the right of all people to adequate housing and obliges the State² to respect, protect and fulfil this right.

2.3 Scotland is not a signatory to the ICESCR or its twin, the International Covenant on Civil and Political Rights (ICCPR). However, human rights are protected under the Human Rights Act 1998 and the Scotland Act 1998. These two Acts require the Scottish Parliament, the Scottish Government, and bodies conducting public functions, to act in compliance with the European Convention of Human Rights (Convention)³. They also allow Scottish Courts to strike down legislation that fails to comply with the Convention and to adjudicate on complaints that bodies conducting public functions have violated a person’s human rights.

2.4 Various actions have also been pursued to instil a stronger human rights culture in the delivery of public services. These have included the establishment of the Scottish Human Rights Commission, the Scottish National Action Plan for Human Rights from 2013, the inclusion of an explicit human rights outcome in Scotland’s National Performance Framework⁴ in 2018, and the incorporation of the UN Convention on the Rights of the Child into Scots law from 2021⁵.

The proposed Human Rights Bill

2.5 From a housing perspective, the most important development has been the Scottish Government’s announcement that it will bring forward a Human Rights Bill in the

¹ The UK Government has never ratified the ICESCR Optional Protocol. UK residents cannot therefore seek redress for a violation of their economic, social and cultural rights at the national or supranational level, in contrast to civic and political rights.

² The UN use the term “State” to refer to all public authorities and branches of government, from the local to the national.

³ The ECHR primarily relates to civil and political rights rather than economic, social and cultural rights such as adequate housing.

⁴ <https://nationalperformance.gov.scot/>

⁵ Although outside the scope of this paper, it should be noted that the UK Government has talked of the UK withdrawing from the Convention and replacing it with a UK Bill of Rights. Also, at the time of writing, a review of the UK Human Rights Act was underway.

current session of the Scottish Parliament. This will be framed around the recommendations of the Scottish National Taskforce on Human Rights Leadership (2021) for putting in place a legal human rights framework. These recommendations have a strong emphasis on access to justice and enforcement to enable people to exercise their rights.

2.6 The Bill is intended to achieve a step-change in the advancement of human rights and the ability of people to enjoy these rights, especially the most vulnerable and least well represented. In keeping with this, it will cover civil, political, economic, social, cultural and environmental human rights to reinforce the fact that all human rights are interwoven and indivisible. It will make human rights enforceable, which implies that a variety of administrative and legal mechanisms of redress will have to be put in place. It will also place duties on organisations engaged in work of a public nature or contracted to deliver public services to respect and fulfil people's human rights. This will include local authorities, RSLs and most likely private housing providers such as private landlords.

2.7 At this early stage it is difficult to be precise about what the Bill might mean for housing policy and housing providers but the Taskforce recommendations suggest that:

- The Scottish Government will have to go beyond codifying human rights and set out clear and practical guidance and allocate sufficient resources to ensure housing and other human rights can be progressively attained within a reasonable timescale.
- The burden of proof for demonstrating progress towards the right to adequate housing will ultimately rest with the State, and specifically the Scottish Government. This includes responsibility for ensuring there is reliable and timely evidence to inform the allocation of resources and to populate indicators required to monitor results.
- National and local housing strategies and business plans will need to have a clear focus on promoting dignity, wellbeing and empowerment, and show how actions will give effect to these values as well as progressively realise the right to adequate housing.
- Housing providers that conduct public functions will have to carry out services, including procurement and responding to complaints, in a responsive, transparent and open manner.
- Landlords will most likely have to intensify efforts to promote equality and dignity, to tackle discrimination and harassment, and to ensure that tenants and other customers have access to the information and advice they need to exercise their rights.
- The Scottish Government, local authorities and housing providers will be more open to legal challenge if they fail to meet minimum standards. The Taskforce has recommended that individuals and collective complaints should be permitted and that judicial reviews must take account of the ICESCR and related material⁶ rather

⁶ This material could for instance include other UN treaties, UN General Comments and a Special Rapporteur guidelines and recommendations and case law from other jurisdictions.

than (as now) rely on civil and political rights, such as the right of individuals to “respect” for their private life, family life and home.

- Regulatory bodies will have an enhanced role in assessing progress towards the realisation of human rights. This will include the Scottish Housing Regulator, whose Regulatory Framework already reiterates that social landlords must promote and comply with human rights legislation.
- Some form of institutional provision will be required to deal with circumstances if the Scottish Government fails to act progressively to realise one or more human rights.

2.8 The Taskforce did not address the policy challenges of implementing housing rights and nor was it asked to define what an adequate standard of living (including adequate housing) might look like in concrete terms. It did, however, employ human rights principles that will invariably shape implementation of the right to adequate housing. Before discussing the most pertinent of these principles, however, it is useful to look how the UN has defined the right to adequate housing.

The definition of adequate housing

2.9 For the last two decades the UN has identified adequate housing as being fundamental in its own right and has regularly underscored the need for everyone to have access to their own home, including those who are vulnerable or marginalised. For the UN, housing is a social good that plays a fundamental role in enabling individuals and families to live in safety, peace and dignity, as well as contributing to the attainment of other human rights. In support of this, the UN has had a Special Rapporteur on the right to adequate housing since 2000. This independent legal expert is appointed for a five-year period to promote the right to adequate housing and to suggest ways States could overcome barriers to its realisation. The UN Committee on Economic, Social and Cultural Rights (CESCR), which has oversight of the ICESCR, has also issued two housing specific General Comments (number 4 and 7) that respectively detail the scope of the right to adequate housing and evictions. Whilst not legally binding, General Comments are widely accepted to provide authoritative interpretations on human rights matters.

2.10 General Comment 4 outlines seven conditions that must all be present if a State is to meet its obligations in terms of ‘the right to adequate housing’. These are:

- **Security of tenure:** All persons in all tenures should have sufficient security of tenure to guarantee legal protection against unwarranted eviction, harassment and other threats.
- **Affordability:** Housing related costs should not threaten or compromise the attainment and satisfaction of other basic needs such as food, education and access to health care.
- **Habitable housing:** A home should guarantee the physical safety of its occupants and provide them with adequate space as well as protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.
- **Availability of services, materials, facilities and infrastructure:** A home should contain facilities vital for health, security, comfort and nutrition, such as

access to safe drinking water, adequate sanitation, washing facilities, food storage, refuse disposal and energy for cooking, heating and lighting.

- **Accessible housing:** Housing should cater for a diversity of needs including the specific requirements of disadvantaged and marginalised groups.
- **Location:** Housing should not cut off occupants from job opportunities, schools, childcare, healthcare and other services or facilities, or be located in polluted or dangerous areas.
- **Cultural adequacy:** Housing should respect and allow for the expression and preservation of cultural identity and different ways of life.

Human right concepts critical to implementing housing rights

“The cause of human rights has entered a new era. For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms—the Universal Declaration of Human Rights, the international covenants, and much else. Such works needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation” (Kofi Annan, 2005 Address to United Nations Commission on Human Rights)

Indivisible, interdependent and interrelated

- 2.11 As alluded to already, the right to adequate housing not only forms part of the right to adequate living but is intertwined with other civil, political, economic, social and cultural rights. In human rights language this means that all human rights are indivisible, interdependent and interrelated, such that implementation of one right impact on other rights. This can be illustrated by two examples. First, someone without adequate housing may be unable to attain their right to be protected against poverty and exercise their right to participate in civil and political life. Second, the ability of disabled people to attain their right to live independently and their right to liberty (i.e. avoid being confined to an institution) can depend on their ability to access a suitable home and the community services they need to enjoy their home and to participate in education, work and other activities of their choice.
- 2.12 It may be straightforward to articulate the way human rights are indivisible and interdependent at the level of an individual. However, legal and other academics continue to debate the application of this principle at policy level and the challenges of setting priorities across multiple policy objectives in the face of finite resources (see Nickel, 2008; and Antony, 2018). Neither the CESCR nor the Taskforce have been explicit about how such challenges might be overcome, but it is safe to say they will not be addressed by continued working in policy silos. Future progress therefore may largely depend on the next Scottish National Action Plan for Human Rights, which the Taskforce has recommended should be put on a statutory footing, and whether it can establish a targeted cross-cutting strategy that contains clear and measurable priorities and foster greater collaboration towards attaining common goals.

A concurrent competence

- 2.13 Housing is a concurrent human rights competence. This means that whilst the Scottish Government has a pivotal role, duties and obligations to promote and deliver adequate housing extend to local authorities and housing providers.

- 2.14 The right to adequate housing “*does not give individuals the right to automatically demand a home from the State*” (UN-Habitat, 2009) but it does place a duty on the Scottish Government to “*move as expeditiously and effectively as possible*” (OHCHR, 2007) to ensure every person in all tenures can exercise their right to adequate housing, and to give operational meaning to the seven UN conditions of the right to adequate housing.
- 2.15 For the most part, the CESCR has left it to individual national and devolved Governments to set their own housing rights norms and standards as well as their own policies and programmes. Regardless of this, the Scottish Government has yet to demonstrate convincingly that it has achieved these obligations. Part of the reason for this are significant gaps in available data (see subsequent chapters). However, the Scottish Government and other public bodies also face big challenges in promoting and fulfilling housing rights.
- 2.16 One challenge is that the Scottish housing system is market driven, such that economic or social conditions, including the macro-economic and social security policies of the UK Government, are often bigger drivers of the affordability, availability and demand for housing than housing policies developed in Scotland. This means that housing policy often has to react to unanticipated, and sometimes unwelcome, pressures on the housing system. Another challenge is the heterogeneity of local housing markets. This adds to the complexity of identifying shortcomings of existing policies and programmes and establishing the best course of action from a human rights perspective in light of available resources.
- 2.17 Local authorities also have a prominent role in enabling people to exercise their right to adequate housing and ensuring third parties, such as private landlords, do not infringe on these rights. Local authorities play a key role in implementing many national policies in a way that is best suited to the local context and increase opportunities for people to exercise their housing and other human rights. In addition, most Scottish local authorities are social landlords and, like RSLs, are at the frontline of providing housing and housing-related services for some of the more vulnerable and marginalised members of the wider community.
- 2.18 Apart from having to contend with the dynamics of the local housing system, local authorities face challenges around how to work around resource constraints and how to co-produce and deliver effective strategies with all sections of the local community. The recommendations of the Taskforce also indicate that local authorities will have to integrate ‘green’ aspects into their approach to human rights.
- 2.19 More generally, there is a need to better co-ordinate national and local government actions to progress the ‘right to adequate housing’. The Special Rapporteur (2020a) has stressed the need to ensure local governments have the capacity and resources commensurate with their responsibilities, and has been critical on national housing programmes, observing that:

“Housing programmes, however, tend to be developed and implemented through inefficient top-down decision-making that reinforces patterns of social exclusion and creates housing that is ill-suited to peoples’ needs (p6)”.

- 2.20 The OHCHR (2011) has issued guidance that stipulates that private and social enterprises must respect human rights. It also stresses that the State has a duty to ensure private and third sector businesses understand these responsibilities and to prevent such businesses from interfering with human rights.
- 2.21 In the case of housing, the CESCR has said that the regulation and taxation of private businesses should be consistent with a State's duty to fulfil human rights and preserve tenure security and affordable housing. The Special Rapporteur (2020a) has been especially concerned about speculative housing investment and the financialisation of the housing system; and the role this has played in exacerbating homelessness, poverty and disadvantage, and in reducing the ability of people to afford a home in their community. These and other concerns have led the Special Rapporteur (2020a) to call for more stringent regulation, policing and taxation of private housing providers and financial institutions, greater transparency in private sector investment, and measures to prevent the loss of social housing⁷.
- 2.22 The Scottish Government has put in place measures such as the Scottish Business Pledge and the Fair Work Convention to assist private enterprises to adopt a human rights approach in respect of staff development, procurement and other business practices. However, targeted guidance for financial institutions and private housing providers on the additional human rights duties involved in delivering the social function of housing has not been produced anywhere in the UK. The Taskforce recommendations appear to imply the Scottish Government will have to address this.

Progressive realisation

- 2.23 Civil and political human rights are usually presented as being inalienable but rights mean little if others do not take responsibility to protect or uphold them. For this reason, most civil and political rights are not absolute and can be limited to protect the rights of other individuals or to protect the general welfare of the wider public. For example, the right to freedom of expression is accompanied by responsibilities not to incite hatred, violence or wilfully defame others. Similarly, States can interfere with the right to peaceful enjoyment of possessions, such as private property, if such action is permitted by law and can also be shown to be in the public interest. An example would be compulsory purchase of land or property to enable a major road to be developed.
- 2.24 In contrast, economic, social and cultural rights are generally framed in terms of 'progressive realisation'. This has been reinforced by the Special Rapporteur (2020a) who advised that housing strategies should be based on 'progressive realisation'.
- 2.25 The principle of progressive realisation acknowledges that as economic, social and cultural rights cannot be fully achieved all at once or over a short period of time, every State must pursue a process of continuous improvement. This is understood to entail regularly reviewing and updating laws, policies, programmes, codes of practice and non-statutory guidance, as well as budget decisions and resource allocations, to enhance the ability of people to realise their rights and improve their lives.

⁷ The Council of Europe (2008) has also called for states to take steps to ensure there is sufficient and appropriate social housing across Europe to prevent low-income households from being forced into high-cost rents, with the risks of homelessness and evictions on default of payments.

2.26 CESCR (1991) General Comment 3, OHCHR (2007) guidance, Blyberg and Hofbauer (2014) and the Bonavero Institute (2021) report commissioned by the Taskforce collectively explain that progressive realisation means State bodies have to:

- Show that it is using the maximum of available resources to enable all people to realise their ‘right to adequate housing’ as swiftly as possible.
- Prioritise actions to protect the housing rights of vulnerable, disadvantaged and other individuals living in precarious housing conditions.
- Immediately enact obligations to ensure non-discrimination plus other essential levels of protection that do not require substantial resources.
- Ensure overall increases in national and local government resources leads to a corresponding increase in the budget allocated to economic, social and cultural rights-related areas of work.
- Avoid deliberately taking retrogressive measures to cut goods and services that would deprive people of rights that they currently enjoy⁸, unless justified and weighted against the enjoyment of other economic, social and cultural rights.
- Demonstrate that in times economic crisis or natural disaster, decisions to cut budgets that could hinder the realisation of rights are made only after consideration of all alternatives, that vulnerable groups are protected and that any damage to the realisation of rights is rectified once resource constraints ease.
- Adopt indicators for the relevant rights to regularly monitor progress ‘on the ground’ and to show the share of the population and different sub groups that have yet to attain their rights.
- Produce periodic reports that document what progress has been made over time in terms of progress to the effective realisation of the relevant rights.

2.27 Progressive realisation implies that national and local decisions about how to interpret and work towards full realisation of the CESCR’s seven housing conditions are primarily a matter for public policy as opposed to the legal sphere. This echoes Sen (2004), who observed that implementation of human rights “*cannot be sensibly confined within the juridical model in which it is frequently incarcerated*” (p 319).

Core minimum standards

2.28 To improve implementation of economic, social and cultural rights, the CESCR General Comment 3 introduced the principle of core minimum standards as part of their framework for progressive realisation. This was primarily intended to counter perceptions that economic, social and cultural rights were aspirational and were not enforceable. The intention was therefore to have a core set of minimum obligations that courts and tribunals could use to adjudicate on complaints about socio-economic human rights violations, and if upheld, place a duty on the State to rectify matters immediately.

2.29 It was originally planned that a core set of international minimum standards would act as a ‘minimum floor’ that all States would have to comply with. Not too surprisingly, achieving consensus on core minimum standards for adequate housing has proved

⁸ Budget cuts would not be retrogressive if compensatory measures or efficiencies neutralising any negative impact from cuts.

elusive. Consequently, the UN focus has shifted to offering advice on immediate requirements, scrutinising a State's method for setting minimum standards and assessing their attainment. This approach has also been generally applied in health and other policy areas where international minimum core standards have been identified (Bonavero Institute, 2021).

2.30 In line with these more recent developments, the Special Rapporteur has issued Guidelines (2020a) that suggest that States have an immediate obligation to:

- Respond urgently to the needs of homeless persons and to implement plans to “prevent and eliminate systemic homelessness” as swiftly as possible to the maximum of their available resources.
- Prevent forced (illegal) evictions of individuals, families or communities from their homes and/or land and, in line with General Comment 7, ensure the law is enforced against housing providers who carry out forced or illegal evictions.
- Prohibit all forms of discrimination in housing by public, social or private organisations, including laws and policies that violate the right of migrants and displaced persons.
- Regularly monitor the full extent of homelessness and inadequate housing, preferably including independent assessment of progress.

2.31 Some elements of the right to adequate housing are already subject to legal regulations and remedies in Scotland. This includes the abolition of the test of priority need for those assessed as homeless, legal appeals and procedures around evictions, demolitions and allegations of discrimination in social housing allocations and complaints against social and private landlords.

2.32 On the other hand, it is not clear if the UN would consider current provisions add up to a comprehensive set of core minimum standards for adequate housing. Indeed, the recommendations of the Taskforce suggest the Scottish Government may have to initiate a participatory process to define a core minimum set of obligations and standards specifically for adequate housing. This would be in addition to a set of outcome indicators for the full realisation of adequate housing to chart how many households fall short of their right to adequate housing, which is the focus of this paper.

THE VALUE OF APPLYING A HUMAN RIGHTS LENS TO HOUSING

Shared vocabulary

2.33 Ongoing policy discussions suggest there is growing recognition that the language of human rights can provide a valuable ‘shared vocabulary’ around the ways inadequate housing can manifest itself and negatively impact on the lived experience of individuals and communities. The Taskforce’s proposed expansion of human rights to include the ‘environment’ may also help to keep in clear sight the connection between housing conditions and surrounding area, and how this shapes people’s sense of identity, dignity, belonging, safety and place in society.

2.34 In arguing that financialisation of housing has reduced the ability of ordinary households to find a suitable home they can afford, the UN Special Rapporteur (2020a) has provided a timely reminder that housing is a policy area where human

rights are important for everyone. It is instructive to think about how many of us are likely to incur housing problems in our lifetimes, such as difficulties finding a home we can afford, poor physical conditions, or accessibility problems associated with disability or old age. Human rights, however, are all too frequently portrayed as being principally about protecting the rights of people who are vulnerable, marginalised or discriminated against. Few would disagree that housing policy should give priority to individuals and social groups that are marginalised or disempowered. The downside is that this can reinforce the tendency to frame policy discussions around safety nets and 'rationing' systems rather than allowing people the agency to identify their own needs.

2.35 General Comment 3 stressed that a State is obliged to strive to "fulfil the widest possible enjoyment of the relevant rights". This suggests that the right to adequate housing for all must be one of the guiding principles driving housing policy. This has major implications for the Scottish Government and its commitment to align the *Housing to 2040* with the cross-cutting human rights agenda. First and foremost, it points to a need to think through how the housing system can be made to work in a way that enables everyone to exercise their housing rights and does not disadvantage different social groups or individuals to the extent that special policy measures continue to be routinely required. In exploring this fundamental issue, it may be instructive to explore whether or not the current suite of housing policies and their implementation:

- Give sufficient attention to ensuring all residents, including those in marginalised and vulnerable social groups, can live in homes that allow for the exercise of privacy, autonomy, family life and participation in society. These are themes central to both the human rights agenda and the personalisation agenda.
- Ensure enough is being done to ensure housing markets are serving the housing needs and requirements of individuals and families rather than investment goals and priorities.
- Promote the dignity of people and therefore place as much emphasis on the agency of individuals (by giving them the freedom to choose the homes and localities they value) as the role of housing in supporting health, economic growth and environmental outcomes.

Approach to thinking about and analysing needs and rights

2.36 The difference between housing rights and housing needs is murky. Both are socially constructed concepts and are contingent on social norms and standards. Rights and needs are also intertwined in the sense that the seven UN conditions of adequate housing broadly reflect various facets of housing need that have been debated in Scotland and elsewhere for decades.

2.37 Where housing 'needs' and 'rights' approaches differ is in relation to who defines requirements and how to respond. Needs approaches are generally top-down and require something is 'done' for those in need. This often involves the management and rationing of need, giving rise to notions of deserving and undeserving households. In contrast, a rights approach seeks to promote the agency and dignity of people by promoting meaningful engagement with individuals and communities to define their own needs, requirements and solutions (Fitzpatrick et al, 2014).

- 2.38 A fully developed framework for monitoring the numbers of households denied their 'right to adequate housing' would also differ markedly for current methods used in the UK to estimate 'housing need'. The latter centre on estimating new housing supply requirements, differentiating between market and other (social and affordable) sectors. This can be illustrated by looking at the Scottish Government's Centre for Housing Market Analysis (CHMA, 2020a) housing need and demand excel model.
- 2.39 The CHMA model is principally focused on current households that have yet to establish a stable home. It therefore disregards established households with housing problems that are intensifying due to the onset or worsening of disability or health conditions, or a change in personal or financial circumstances. The stated rationale for this is that an in-situ solution or a move to an alternative house would resolve any difficulty whilst any arising vacancy would provide a home for another household. This assumption is applied irrespective of how feasible either option is and whether dwellings are of the right size, design and tenure to meet the needs of existing households that are looking to be re-housed. Most concealed and other hidden homeless households are also disregarded due to misgivings about muddling together current need and future need (i.e., projected net household growth).
- 2.40 Guidance on local housing strategies (Scottish Government, 2019a) and housing need and demand assessments (CHMA, 2020b) both confirm that exploring the needs of existing households and hidden homeless households must be investigated. The difficulty is that the way in which housing need is compartmentalised holds back broader understanding of the needs, aspirations and lived experience of individuals and families, and the extent to which the composition of housing stock prevents people from exercising their housing rights. This in turn hinders the ability to make well informed decisions about priorities across different urban and rural settings.
- 2.41 In contrast, an outcome focused framework for monitoring adequate housing would require a broader conceptualisation of housing exclusion. It is outside the remit of this report to specify what such a framework would look like. That said, it is clear that it would embrace both emerging and established households. It would bring analysis of the position of different social groups, including those likely to experience disadvantage and those with 'protected characteristics' centre stage. It would also employ a mix of outcome and output orientated indicators for each of the seven UN housing adequacy conditions. In addition, instead of estimating the proportion of households that cannot afford to buy a house, it would focus on the burden of housing costs and how many households face high housing costs and struggle to pay for housing and other essentials across all tenures.

Strategic focus

- 2.42 The CESCR has not elaborated further on what the seven conditions mean in concrete terms. Instead, it has left it to individual States develop their own strategies "*through democratically accountable processes*" that define these conditions and accompanying priorities. Consequently, CESCR expects each Government to produce and regularly refresh a national housing strategy that clearly identifies how this will give effect to the right to adequate housing and other human rights. In support of this requirement, the Special Rapporteur (2020a) has stated that:

- Strategies should be based on clear goals and timelines and should clarify responsibilities and resources for achieving specific objectives that will enable progress towards adequate housing for all in the shortest possible time.
- Strategies should provide coherence and coordination across all relevant policy areas, including the contribution of 'land planning' and other service areas.
- More detailed specific strategies or action plans might be necessary to address difficult obstacles such as homelessness, discrimination and environmental degradation.
- Implementation should be independently monitored, for instance by national human rights institutions and parliamentary committees, and engage communities in the process.

2.43 The Scottish Government's aspirational strategy *Housing to 2040* appears to fall short of these recommendations. The proposed human rights Bill, however, holds out the possibility that housing strategies, both national and local, may become more targeted, backed by S.M.A.R.T. (specific, measurable, achievable, relevant, and time-bound) action plans.

OUTCOMES AND THEIR MEASUREMENT

- 2.44 The shift to a human rights approach to housing provides an opportunity to revisit and think afresh about the overall goals of housing policy, the outcomes housing policy wants to achieve, which existing housing outcome indicators remain relevant, what new or modified outcome indicators might be required, and which of these new or modified indicators could be potentially measured in light of data availability.
- 2.45 Existing human rights monitoring frameworks are typically cross-cutting and contain very few housing indicators and frameworks that specifically monitor the right to adequate housing are extremely thin on the ground⁹. Moreover, frameworks have tended to flounder due to data constraints, including the UN Habitat (2003) Monitoring Housing Rights Programme, which failed to reach the stage of practical application.
- 2.46 There is a burgeoning literature on the topic of human rights monitoring but there is no consensus about the role and value of indicators. It is generally accepted that indicators have a role to play in human rights policy development and monitoring but there is controversy around the extent to which indicators, as opposed to human expertise and experience can, and should, drive both processes. At the root of this debate is the reality that human rights monitoring is complex, demanding and highly context dependent (McGrogan, 2016).
- 2.47 A risk of data-driven monitoring frameworks is that they can close off conversations on complex and contested issues (Rosga & Satterthwaite, 2008). Essentially, they tend to create an impression that there is a straightforward and linear link between policy actions and outcomes, whereas housing is dynamic and shaped by a complex system of factors, such that outcomes are seldom the result of housing policy actions alone. For instance, improvements in the speed and ease with which people can access

⁹ Aside from the 2003 UN proposals, only two other monitoring frameworks were identified. The first was the UN-Habitat Housing Rights Tool (2018), which is described as a decision-support tool and relies on systematically capturing the views of housing experts and policy makers in different cities. The second was the EU Social Protection Committee report on housing and social exclusion, which ended up focusing on affordability and overcrowding due to data constraints.

social housing can contribute to reducing homelessness. On the other hand, housing policy cannot itself resolve failings in the operation of social security, health and social care systems or address broader social and economic conditions that can result in individuals and families that experience traumatic or adverse events becoming homeless.

- 2.48 In short, no matter how comprehensive and well specified, no set of outcome indicators can displace the need for research, reasoned debate and judgement in deciding how well policies and resources have been applied and the extent which they are contributing towards the outcomes sought over the longer-term.

Guiding principles for selecting proposed indicators

- 2.49 Chapter 3 discusses possible outcomes and associated indicators for the seven UN conditions for adequate housing. These 29 potential indicators are listed in Table 2.1.
- 2.50 This list has been shaped by our review of CESCR and Special Rapporteur documents and Scottish housing policy concerns, and, in particular, those noted in *Housing to 2040*. Consistent with the ‘can-opener’ remit of this study, however, this list is illustrative and should not be read as either comprehensive or definitive.
- 2.51 The focus has been on quantitative indicators that can be expressed in numerical terms and that:
- Provide an insight into the numbers of individuals and households whose housing rights appear not to have been fully realised, as opposed to housing system trends, policy efforts or other factors that may impact on this outcome.
 - Reflect outcomes associated with the full realisation of the right to adequate housing rather than minimum standards, which tend to have more of a focus on means and outputs, such as the numbers of new social and affordable homes developed in a given year, rather than ends.
 - Reflect, where possible, current Scottish housing policy norms or emerging standards as they tend to have defined thresholds in terms of what is considered appropriate.
- 2.52 As stated in the introduction, the review has focused mainly on ‘objective’ indicators that measure material conditions such as physical house conditions. We would have preferred to include ‘subjective’ outcome indicators that reported people’s own perceptions of their housing situation. However, as discussed in subsequent chapters, data to support such indicators are scarce.
- 2.53 Likewise, the ability to report on outcomes for different sub-groups, including those with ‘protected’ characteristics, remain severely constrained by data gaps and small sample sizes. Thus, figures reported in chapters 3 and 4 are mostly restricted to the population as a whole.

Table 2.1: Potential indicators associated with the right to adequate housing

Condition	No	Possible indicator
Tenure security (including homeless)	1	Households threatened with, or experience of, homelessness as a result of mortgage related repossessions
	2	Households evicted from the social rented sector
	3	Households evicted from the private rented sector
	4	Households evicted from the rented or owner occupied home unable to secure suitable alternative accommodation
	5	Households in private rented sector without adequate security of tenure
	6	Households that contain adults that lack tenure security within the home
	7	Average number of households that sleep rough on a given night
	8	Households in emergency and/or temporary accommodation at end of financial year
	9	Households that are 'homeless at home' (other 'live' statutory homeless households)
	10	Concealed families that want or require a home of their own
	11	Households (benefit units) compelled to share accommodation and are exposed to potentially dangerous situations
	12	Potential households unable to secure a home of their own
	13	Households with multiple and complex needs (only if not included in other homeless indicators)
	14	Irregular migrants and others without recourse to public funds that lack tenure security
Housing affordability	15	Households required to spend more than 25% of income on housing costs
	16	Households with AHC residual income below appropriate minimum income standards
	17	Households that experience housing cost induced poverty
Habitable homes with adequate services and facilities	18	Households that occupy a BTS dwelling
	19	Households living in energy inefficient homes (housing quality driver of fuel poverty)
	20	Households lacking a dry home (e.g., dampness and condensation)
	21	Households that live in homes that are not free from major critical disrepair
	22	Households whose home fails the SHQS Healthy, Safe and Secure component
Accessible housing, (physically or socially trapped)	23	Households that live in overcrowded conditions (bedroom standard)
	24	Households with unmet need for adaptations to their home
	25	'Vulnerable' households (that contain a person with a limiting health condition or disability) that do not occupy a home that meets basic accessibility standards
	26	People with disability or health condition trapped in hospitals or care homes (i.e., awaiting adaptations or because of lack of housing options)
	27	Households trapped in inappropriate housing due to domestic abuse
Cultural adequacy	28	Households that self-identify as Gypsy/Travellers that lack adequate and culturally relevant housing
Location	29	Households that live in local area that cannot access work and key services within reasonably short distance

3. OUTCOMES ASSOCIATED WITH THE RIGHT TO ADEQUATE HOUSING

INTRODUCTION

- 3.1 This chapter is split into seven sections that correspond to each of the CESCR's adequate housing conditions. Each section explores the main dimensions of the condition, associated policy developments, and possible outcome indicators, noting where data gaps currently prevent the development of suitable indicators.

SECURITY OF TENURE

Key considerations

- 3.2 Security of tenure is the cornerstone of the 'right to adequate housing'. As the Special Rapporteur for Housing has said, although "*no-one is fully protected from tenure insecurity*" people should "*possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats*" (UN General Assembly, 2012). The UN Guiding Principles on Tenure Security (OHCHR, 2014) have also confirmed that 'tenure rights' should apply to all individuals, families and communities regardless of whether they are owners, renters, reside in temporary or emergency housing, or live in any kind of informal settlement and that:

- States have an immediate obligation to prevent forced evictions and to have accessible and effective legal procedures to prevent forced eviction by public, voluntary or private parties.
- States should take progressive action to strengthen tenure security, especially for those lacking settled and legally secure housing.

What are forced evictions?

A forced eviction is the permanent or temporary removal against their will of individuals, families and/or communities from the homes they occupy, without the provision of, and access to, appropriate forms of legal or other protection. Forced evictions do not necessarily involve the use of physical force.

Source: CESCR (1997) General Comment 7.

- 3.3 The non-legally binding tenure security guidelines focus on the often violent and inhuman nature of slum clearance and land grabbing in developing countries. However, the European Committee of Social Rights (ECSR, 1996) has stressed that tenure security extends to preventing and reducing homelessness with a view to its gradual elimination. The UN guidelines and other CESCR documents collectively state that:

- Concerted effort should be made to end homelessness, wherever possible by finding in-situ solutions for people facing a threat to the continued occupation of their home.
- Households should be able to challenge unfair contractual conditions, contractual failings (e.g., disrepair) and threats of eviction through accessible and affordable safeguards such as dispute resolution mechanisms, access to legal aid and so on.
- Where evictions are justifiable, such as for persistent non-payment of rent or mortgage, States should ensure that evictions are used as a last resort and are

carried out in a manner consistent with the law and the principles of reasonableness and proportionality.

- Evictions should only proceed once relevant authorities have provided effective assistance to ensure the household can secure a suitable alternative home.

Homelessness

3.4 Various definitions of homelessness can be found in the human rights literature but all are consistent with the OHCHR observation that homelessness goes well beyond rough sleeping and often involves the loss of social connections. For this study, probably the most pertinent of these is the ETHOS definition developed by the European Federation of Organizations Working on Homelessness (FEANTSA, 2018)¹⁰. According to ETHOS, a person is homeless if they are roofless, houseless or occupy insecure accommodation and thus fall into one of six categories:

- Sleeping rough, which includes people living on the streets and public spaces and/or sleeping in cars, tents or public transport.
- In emergency accommodation, such as night shelters, with people tending to alternate between sleeping rough, emergency and temporary accommodation.
- In short term or temporary accommodation, such as homeless hostels, bed and breakfast placements and transitional supported housing (e.g., women's shelters and refugee reception centres) where residence is time limited.
- Sofa surfing, such as people living short term with family and/or friends in a dwelling that is not their usual address and where they lack any occupation rights to the dwelling.
- Ready (or about) to be released from an institution but have either stayed longer than necessary due to a lack of suitable housing or the high risk of lacking a home on release.
- In unconventional and non-residential dwellings such as makeshift shelters, huts, cabins and other temporary structures not intended to provide a 'usual residence'¹¹.

3.5 The six ETHOS categories are similar to the CRISIS core homelessness definition, which provides a snapshot (or stock) count of homeless people at a given point in time (Fitzpatrick et al, 2019). The main difference is that the latter does not estimate people ready to leave institutions and restricts the count of people in temporary housing to those in 'unsuitable' accommodation such as B&B.

3.6 The ETHOS definition can be widened to include an 'inadequately housed' category. This refers to people that live-in unfit housing, experience extreme overcrowding and/or at risk of violence within the home. It can also potentially include people in poor health and people with a disability whose dignity is comprised by living in accommodation ill-suited to their needs. CRISIS also employ a wider homeless definition that includes concealed, sharing and overcrowded households. For this exercise, the CRISIS definitions have been adopted in preference to the ETHOS

¹⁰ FEANTSA developed the ETHOS typology to support data collection and to provide a common "language" for discussing homelessness across Europe. Of the two versions, 'ETHOS light', which excludes 'inadequate housing' is now the one in most common use.

¹¹ Scots law goes beyond this and states someone is homeless if it is not reasonable for an applicant to continue to occupy their current accommodation, which extends to reasons such a physical health and mobility, mental health and arguably financial hardship.

definitions, as the latter significantly overlaps with other UN conditions of adequate housing.

- 3.7 FEANTSA and CRISIS partly developed their alternative homelessness definitions to counter sole reliance on official homeless statistics. Statutory homelessness data are mainly used to monitor homeless flows from year to year. They record how many households present as homeless, how many of them receive local authority assistance, and in what ways. As such, they tend to be more a measure of service supply than need. That said, statutory homelessness statistics remain vital. Households that present as homeless usually experience one or more forms of housing exclusion embedded in the ETHOS and the CRISIS definitions. This is not so surprising. The two definitions broadly match the way homelessness is described in Scottish legislation¹², strategies and policies. Estimates suggest that 70% of homeless people in Scotland apply to a local authority and thus appear in the official statistics (Fitzpatrick et al, 2019).
- 3.8 In drawing attention to the financialisation of housing, the UN has heightened awareness that the drivers of homelessness are complex and are shaped by how institutional, interpersonal and individual factors are interwoven with the way market-driven housing systems operate. As a result, pathways into homelessness are diverse. However, for people with a history of deep-rooted and overlapping housing, health and care needs, homelessness, including rough sleeping, can be the outcome of successive system failings. In particular, the persistent provision of fragmented services often means that staff can fail to engage effectively with individual service users. It also means that people often experience poor transitions between services (Fitzpatrick et al, 2013; Cornes et al, 2014, Scottish Government, 2018b).

Strengthening security of tenure

- 3.9 Although States are expected to progressively strengthen tenure security, the human rights literature does not set out specific 'rights' a tenancy must contain, such as the duration of a tenancy. This implies social and private landlords are free to negotiate tenancy agreements, subject to complying with domestic legislation and a person's human rights to dignity, privacy and family life¹³. The same holds true for mortgage contracts. This effectively means that domestic law plays a critical role in setting minimum standards for security of tenure against which the State and housing providers can be held to account.
- 3.10 The growth of private housing in Europe has led some to ask if, and how, the right to adequate housing can be equally applied to those living in the private and social sectors (Domurath & Mak 2020). One challenge is that the prime function of human rights is to regulate relations between the State (and its relevant authorities) and individuals as opposed to relations between private individuals or companies¹⁴.

¹² The Housing (Scotland) Act 1987 (as amended). It defines someone as homeless if they are sleeping rough, involuntarily staying with friends or family; staying in a hostel or B&B, living in overcrowded conditions; at risk of violence in the home, occupying a home in poor condition that adversely affects health or living in a house that is not suitable for them because they are sick or disabled.

¹³ Human rights guidance for social landlords but not private landlords has been produced, See for example: <https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-social-housing-providers>

¹⁴ For instance, only the State can be the subject of complaints brought before human rights treaty monitoring bodies and courts.

- 3.11 Another challenge is that market principles and private ownership are deeply embedded in domestic law that govern privately owned and rented housing. For instance, the introduction of Private Residential Tenancy (PRT) with open-ended tenancies alongside the establishment of a First-tier Tribunal (Housing and Property Chamber), often abbreviated to the Tribunal, to deal with private landlord and tenant disputes, has strengthened tenure security for private renters in Scotland. On the other hand, the continuation of mandatory grounds for re-possession reinforces the right of a landlord to dispose or otherwise make a return from their asset.
- 3.12 A further challenge is that UK and European case law have hindered the expansion of human rights to private tenancy or mortgage contract disputes. Two studies have reviewed the decisions of the Supreme Court in London or Strasbourg in respect of re-possession and eviction cases (Jackson, 2018; Domurath, 2017). They report that such actions were almost invariably judged to be reasonable if the lender or landlord could show it had acted in accord with domestic law and that the actions have a legitimate basis (e.g. looking to sell). In contrast to evictions cases involving social landlords, proportionate arguments were disregarded on the basis that human rights 'did not apply' and that contractual and statutory rights entitled the lender or landlord to mandatory possession.
- 3.13 It is difficult to know at this stage if the Human Rights Bill would see the principle of proportionality applied to eviction cases involving private owners and renters or whether further changes to Scots law would be required for this to happen.

Repossession and eviction indicators

Mortgage arrears and repossession numbers

- 3.14 Repossession typically occurs when a homeowner has defaulted on their mortgage payments. The only known source of repossession statistics for Scotland are the Civil Judicial Statistics (CJS). The most recent CJS (2020) statistics show that in 2018-19 some 1,869 mortgage or loan repossession cases were initiated and 1,616 cases were disposed of. These figures provide some insight into households in financial stress but they shed little light on housing outcomes. This is because repossession court orders are often used by lenders to stimulate repayments and rarely result in repossession, especially in the same financial year¹⁵. This may help to explain why the Scottish Government use UK Finance data to monitor its Housing and Regeneration Outcomes (Scottish Government, 2020b).
- 3.15 UK Finance (2020) only publish UK wide repossession numbers. If we assume repossessions are evenly distributed across the UK, then around 380 homeowners and 180 'buy to let' landlords in Scotland may have had their properties taken into possession in 2018-19¹⁶. UK Finance report most cases involve customers requesting re-possession or a vacant property because of the industry moratorium on involuntary possessions that has been in place for some time.
- 3.16 From an 'outcomes' perspective, the key human rights measure is whether households that experience voluntary or compulsory repossession also experience

¹⁵ The CJS statistics are also likely to include 'Buy-to-Let' repossessions.

¹⁶ Figures based on 8% share, which is the proportion of the UK population that live in Scotland.

homeless and tenure insecurity. Homeless statistics suggest that the numbers making a homeless application are low (on average, 187 applied each year in the three years to the end of 2019-20). UK Finance and Scottish Government data also suggest the numbers have been on a downward trend since 2010. Little or nothing is known about those that do not make a homeless application.

Social and private renter evictions

- 3.17 Statistics capture the numbers of social tenants affected by the eviction process from 'notice of proceedings' through to 'tenancy termination and eviction'. Evictions in the social rented sector are a last resort¹⁷ and only 5% of cases where a 'notice' is served culminate in eviction (which includes post decree abandonments). In 2018-19 there were 2,301 evictions, up from a low of 1,571 in 2013/14, mainly driven by an increase in local authority action. The eviction process and reasons for eviction both appear to comply with human rights guidance around minimum standards. Once pre-action requirements¹⁸ have been exhausted, it is for a court to judge if it is reasonable to grant an eviction order and most cases are for rent arrears (93%) and anti-social behaviour (6%).
- 3.18 There is a paucity of data about how many private renters are subject to eviction proceedings, how many are evicted and what proportion make a homeless application as a direct result of eviction. This situation has deteriorated since 2017, when private rented eviction cases were transferred to the Tribunal and the CJS stopped publishing statistics on such cases. Tribunal decisions are published but it is unclear which, if any, State body has responsibility for collating decisions into meaningful statistics. This absence of statistics prevents effective monitoring of private rental evictions and whether the Tribunal is providing tenants with a more accessible, fairer and effective route for dealing with arrears, eviction and other disputes with their landlord than previous arrangements. This is out of line with human rights monitoring advice and is thus a cause for concern. Two separate studies that reviewed a sample of Tribunal cases both found that tenant representation has remained weak and that some landlords have 'misused' mandatory grounds (e.g., intending to sell, upgrade or occupy property) to obtain possession (Robson & Combe 2019; Shelter Scotland, 2020).
- 3.19 Official homeless statistics provide an insight into the numbers of homeless applicants that state their private tenancy had been terminated¹⁹ and (if the data are requested) how many of these applicants are then assessed by a local authority to be homeless. But again, from a human rights outcomes perspective, a major weakness is the lack of data to be able to estimate what proportion of private tenants that have been evicted (or had their tenancy terminated) make a homeless application and what proportion are able to secure a suitable alternative home and/or avoid homelessness, with or without local authority support.

¹⁷ Since 2012 pre-action requirements mean social landlords have to exhaust all attempts to resolve the arrears with a tenant before taking legal action to evict

¹⁸ Shelter Scotland (2019b) report some social landlords pre-action activities are not always fully consistent with human rights and that these landlords could do more to prevent eviction and homelessness.

¹⁹ It is understood 'tenancy or mortgage termination' includes cases where a 'notice of proceedings' has been issued.

- 3.20 Since 2009 lenders, RSLs and private landlords have been required to issue a Section 11 (S11) notice of intention to seek repossession of a home, to enable local authorities to intervene and support households to prevent evictions and homelessness. Data on S11 notices are not routinely collated or published by the Scottish Government. It is also not known how many local authorities consistently record and monitor S11 notices²⁰ or how comprehensively landlords and lenders comply with this obligation. Recent work by Scotland's Housing Network (2020) suggests that S11 notices may not be having their intended effect. Based on 2018-19 data obtained from local authorities in the North of Scotland, they reported that homelessness was prevented in just 24% of cases following receipt of a S11 notice.
- 3.21 Overall, data for social rented evictions, especially local authority evictions, is more comprehensive than for the private sector. The weakness is that it is centred on the eviction process as opposed to households subject to eviction. There are limited national level data on what happens to social tenants after a court grants an order for possession. We do not know how many are able to secure a suitable alternative home and, if so, how quickly. The numbers of RSL tenants subject to technical eviction but granted leave to remain in their current home is also not routinely reported. The net result is that current data gaps prevent the monitoring of housing outcomes and how many households subject to an eviction order (across all tenures) become statutory or hidden homelessness, and how many are able to avoid homelessness and secure (or remain in) suitable accommodation due, at least in part, to the intervention of local authorities.

Tenure security within private rented sector

- 3.22 Introduced in Scotland from the end of 2017, the private rented tenancy (PRT) regime is consistent with the CDESCR requirement that States take progressive action to enhance tenure security. Many private tenants do not yet have PRT and instead have some sort of assured tenancy, common law tenancy or occupancy agreement²¹, all of which offer less protection. In the absence of data on the numbers of private renters subject to these various agreements, the numbers of private renters denied their right to tenancy security cannot be established. Private tenants also tend to remain unaware of their rights and struggle to access advice, suggesting further policy effort is needed to empower tenants to exercise their rights (Donohoe & Young, 2019; Evans et al, 2021).

Tenure security within a household

- 3.23 Tenure security is generally conferred when a person's name is recorded on the tenancy agreement or title deeds. Today it is common practice for both partners in a couple to register their names on such documents but there are still instances where only one person's name is registered. This can leave the non-named person, usually a woman, reliant on their relationship with their partner for tenure security, albeit the Matrimonial Homes Act 1981 offers some protection for individuals in this position. To

²⁰ Glasgow City Council does publish data: <https://www.glasgow.gov.uk/CHttpHandler.ashx?id=51176&p=0>

²¹ This includes private renters with a resident landlord, students that reside in halls of residence let by an educational establishment or specialised provider, people who rent from the police or fire brigade and those that rent their home from an employer. Changes arising from the 2016 Act also resulted in a regression of the tenure security rights for students living in 'halls of residence' provided by specialised providers.

the best of our knowledge there is no reliable data to quantify the numbers of adults that lack tenure security within the home or to monitor their housing outcomes should their relationship breakdown.

Homeless related indicators

- 3.24 Official homelessness statistics are based on four Scottish Government data collection systems. The HL1 records data on each applicant's household profile, current and previous housing situation, reasons for making a homeless application, potential support needs and eventual housing outcome. The quality of the HL1 support needs data is variable but otherwise HL1 data, as well as the HL2 and HL3 returns, which collect case level and aggregate data on temporary accommodation, are of sufficient quality and consistency to produce reliable Scotland-wide statistics. In contrast, differences in the way local authorities operate their housing options service means that the Scotland-wide PREVENT 1 statistics are less robust. On saying that, in 2019-20 some 21,650 housing options service users also made a homeless application, equating to 87% of all 24,818 households that contacted such a service for 'homeless related reasons'. The following discussion focuses primarily on HL1 and HL3-based statistics.
- 3.25 In 2019-20 Scottish local authorities recorded 36,855 homelessness applications and 37,336 assessments, of which 31,333 (84%) were assessed to be statutorily homeless. For the past seven years the numbers of applications have been relatively stable whereas the number of assessments and the number of households assessed to be statutorily homeless have started to rise in the last two years. The analytical challenge is that published figures are based on annual flows whereas other outcome indicators for housing rights are based on stock figures and relate to the numbers of homeless households at a given point in time²². The following paragraphs therefore look at:
- Numbers of people sleeping rough on any given night.
 - The numbers living in temporary accommodation at 31 March.
 - Homeless at home (other live statutory homeless households as at 31 March).

Street homeless and rough sleeping

- 3.26 England and Wales conduct regular 'point-in-time' counts of street homelessness, but the only Scottish statistics come from the HL1. It asks if any member of an applicant's household slept rough the night before their application or in the three months before their application. In 2019-20, some 1,643 applicants said someone had slept rough the previous night and 2,884 applicants said someone had slept rough in the previous 3 months. The numbers of applicants that have slept rough according to either measure declined in the decade to 2013-14 but have subsequently remained broadly static. The HL1 also records if an applicant has stated they were 'long-term roofless' prior to their application. In 2019-20, 149 applicants stated this had been the case. Again, this trend has remained broadly static since 2013-14.

²² Most housing statistics are stocks not flows. Stock figures refer to individuals and households in a particular situation at a point in time whereas a 'flow' is the number of individuals or households who pass through a particular situation over a period of time, most commonly one year.

- 3.27 HL1 figures underestimate the scale of the problem as not all rough sleepers seek assistance. Alternative estimates have been produced by Heriot Watt. These are based on various assumptions, including SHS evidence that 30% of rough sleepers and other homeless households do not approach local authorities and that rough sleepers spend an average of 41 nights in a year sleeping rough. These estimates suggest 5,300 households (mostly single people) had slept rough in 2017, with an average of 700 sleeping rough on any given night. They also suggest figures have plateaued, with nightly figures fluctuating from 650 to 800 in recent years (Fitzpatrick et al, 2019).
- 3.28 As other housing outcome indicators are stock-based measures, the Heriot Watt estimate that 700 households sleep rough on any given night is the most appropriate figure to use. The 'order of magnitude' suggested by this estimate appears to be credible but this cannot be confirmed because it has not been possible to 'triangulate' this estimate with other evidence.

Temporary accommodation

- 3.29 All homeless applicants in Scotland are entitled to temporary accommodation. Such provision comes in many forms including emergency shelters and bed and breakfast accommodation, but most is comprised of self-contained dwellings and, to a lesser extent, individual rooms and apartments within an accommodation-based support service²³. In light of this, there is little value in producing separate figures for emergency and short-term accommodation as the ETHOS definition suggests.
- 3.30 The numbers of households in temporary accommodation at the end of each financial year have slowly increased in the past seven years to stand at 11,665 at the end of March 2020, of which 61% were in ordinary social sector housing²⁴. This included 3,570 households with dependent children (families), accounting for 7,280 children in total. Some 75% of families in temporary accommodation were in ordinary social sector housing and 24 % were in 'other' accommodation such as women's refuges or leased property. The recent extension of the 'unsuitable accommodation' order limiting the use of B&B and other unsuitable forms of temporary accommodation is likely to see further reductions in the numbers placed in B&B, which stood at 790 in March 2020.

Homeless at home

- 3.31 Some statutorily homeless households are 'homeless at home'. These are households that have made their own arrangements, such as remaining in their present home or co-residing with parents, other relatives and friends, rather than live in temporary accommodation. The Scottish Government do not routinely publish figures on the numbers of live homeless applications or the housing circumstances of those not in temporary accommodation. However, the Affordable Housing Need for Scotland Report (Dunning et al, 2020), which defined 'live' cases as those that had been opened but not closed within the past 3 years, reported that there were 20,517 such cases at March 2019. Of these, 10,989 were in temporary accommodation. This

²³ Our understanding is that much of the 'hostel' temporary places recorded in Scottish Government statistics involve the provision of rooms or apartments within a supported housing environment.

²⁴ Since the onset of COVID-19 the numbers of households in temporary accommodation, including B&B accommodation has increased. At 30 September 2020, the figure stood at 14,151 households.

implies that the remaining 9,522 live cases were 'homeless at home'. This estimate may include small numbers of people about to leave prison or another institution.

- 3.32 Even with a 3-year cut off point, 'deadwood'²⁵ poses a risk that this 'homeless at home' estimate is on the high side. It was therefore 'triangulated' against Heriot-Watt's stock estimate of 'core homelessness', although it should be noted that this estimate is based on people (not households) that are homeless.
- 3.33 Heriot Watt estimate that on average, between 11,600 and 13,250 people were homeless in any given night in the seven years to 2017 (Fitzpatrick et al, 2019). This count includes rough sleepers (700). It also includes people living in certain forms of temporary accommodation, which appear to correspond to hostels, B&B and 'other' temporary accommodation (4,545)²⁶. After subtracting these two figures, this suggests anywhere between 7,050 and 8,700 people are homeless at home. Heriot Watt caution there are limitations in the data and methods used to produce this estimate of core homelessness and that the core homeless population is heavily skewed towards single adults. Even allowing for this, their findings suggest the Sheffield Hallam estimate may be somewhat on the high side.
- 3.34 We therefore examined 'live homeless data' supplied by the Scottish Government. This suggested it would be appropriate to restrict the count of 'homeless at home' to cases opened within the last 2 years. As Table 3.1 shows, in each of the last 3 years, 90% of live cases have applied within the previous 2 years. We also suspect that most of those who applied in the previous 2-3 years (around 860 cases) are in temporary or supported accommodation, albeit this cannot be confirmed from the data available.

Table 3.1: Live homeless applicants by year case opened, 2018 to 2020

		2018	2019	2020
All live applications	No	21,984	21,910	23,184
Applied within last 2 years	No	19,792	19,648	20,799
	%	90	90	90
All live applicants in temporary housing	No	10,933	10,989	11,665
Live homeless at home: applied within the last 3 years	No	9,725	9,522	10,024
	%	47.08	46.42	46.22
Live homeless at home: applied within the last 2 years	No	8,859	8,659	9,134
	%	44.76	44.07	43.92

Source: Scottish Government ad-hoc request and Newhaven calculations

Notes:

1. The figures are for the end of March for each year. The 2019-20 figures have been affected by the first Covid-19 lockdown measure to bring rough sleepers off the streets. SHR management data note that temporary placements rose to 14,397 in August 2020, before falling to 13,815 in November.
2. 'Homeless at home' includes households that have refused temporary housing and those not offered temporary housing. In 2019-20 the numbers of both cases increased, driven by increases in Glasgow, which the SHR (2020) concluded was due to weaknesses in GCC's approach prior to 2020.

²⁵ Sources of deadwood would include cases where local authorities have lost contact with applicants, households that have resolved their own housing situation in the intervening period but not advised the local authority, lags in closing cases and administrative errors.

²⁶ See the footnote to figure 4.14 on page 79 on the Scottish Homeless Monitor Report by Fitzpatrick et al, 2019.

3.35 Overall, these data suggests that in the past three years, an average of 8,880 households had been homeless at the end of March each year. This is the estimate that has been adopted in chapter 4, although this estimate may still be on the high side due to lags in local authorities closing cases.

Concealed and potential households

- 3.36 The term concealed household refers to households that are subsumed within (or indivisible from) another household and is comprised of three sub-groups:
- Concealed families (couples and lone parents) with or without dependent children that are typically assumed to want and need their own self-contained accommodation.
 - Single adults that live with their parents.
 - Adults that share their home with friends and other non-relatives.
- 3.37 Concealed households are often under-represented or missing from national surveys and official statistics, making it hard to quantify their numbers. Difficulties gathering data are compounded by the fact that whilst many prefer to live separately, others prefer to share accommodation to reduce living costs, to limit the risk of social isolation and loneliness, or for other cultural and personal reasons. In addition, only a small proportion of single persons that prefer to live separately usually have an immediate requirement to do so.
- 3.38 Drawing on rates derived from the English Housing Survey and the UK-wide 'Understanding Society Survey', Heriot Watt estimate that 236,000 households in Scotland contained a concealed household in 2017-18 (Fitzpatrick et al, 2019). Of these:
- Some 18,200 were concealed families, involving 20,000 children.
 - Some 53,500 were single adults that lived in shared accommodation.
 - Some 164,300 single adults living in the parental home or similar.
- 3.39 The concealed families estimate is lower than the more recent Scottish Government (2020f) estimate that was derived from the 2016-18 Scottish Household Survey. It suggests there are 31,000 concealed families, with the true figure likely to fall somewhere between 24,000 and 37,000. Apart from differences in these underlying data, the Heriot Watt estimate, unlike the Scottish Government estimate, allows for the preference of concealed families to occupy a separate home. This is a salutary reminder that difficulty securing a separate home is only one of the possible reasons why families might choose to share housing. With this in mind, the analysis in section 4 has used the lower Scottish Government estimate of 24,000.
- 3.40 We understand that the 53,500 figure refers to adults that live with unrelated adults but share cooking facilities and a living room, which the ONS define as a single household. The Heriot Watt report says little about the composition and needs of this sub-group but it is reasonable to assume most are private renters. Many may be sharing their home with friends or acquaintances but others may be sharing with strangers due to financial pressures, linked to the restriction of housing benefit to the LHA shared accommodation rate. Some of this latter group can find themselves in potentially threatening or dangerous housing situations.

- 3.41 Ideally, there should be an indicator of single adults that are compelled to share their home and are exposed to potentially dangerous situations. However, the Heriot Watt estimate includes adults that are content to share for now. It also does not include individuals that live in HMOs and other shared housing that does not entail sharing living space and/or facilities, which ONS count as separate single person households. The absence of reliable data means that single adults that live in shared and potentially dangerous housing situations cannot be included in the estimate of households that fall short of attaining adequate housing reported in chapter 4.
- 3.42 The estimate of 164,300 potential households is indicative of the rise in the number of people aged 20 to 34 that live in the parental home²⁷. The declining affordability of housing has played an important role in this upward trend, but other factors have also contributed. These include spending longer in education, marrying later, changing labour market prospects and changing social norms. In addition, Hill and colleagues (2020) extensive study found that there are no clear patterns in terms of whether more or less advantaged young adults are inclined to live with their parents. Nor is co-residence viewed in solely positive or negative terms by those involved. Co-residence also appears to allow many young adults to attain an acceptable living standard on a much lower budget than living independently²⁸ (Hill & Hirsch, 2019).
- 3.43 The complexity surrounding the decision to co-reside with parents makes treating delayed household formation as a possible measure of homelessness or tenure insecurity problematic. For now, therefore, potential households have been excluded from the estimate of households that have not realised their housing rights reported in chapter 4.

Chronic and repeated homelessness

- 3.44 Some adults experience multiple disadvantage that combines poor health, homelessness, substance misuse, and offending. These adults rarely participate in household surveys but they often have a history of contact with different public services. This has led to efforts to use administrative data to explore the scale and profile of this sub-group. Hard Edges Scotland (Bramley and Fitzpatrick, 2019) has estimated that, on average, some 5,700 adults experience three 'core' forms of multiple disadvantages each year - homelessness, offending and substance dependency²⁹.
- 3.45 Adults with complex needs typically make repeated homeless applications over several years (Vaughan et al, 2018). As a result, the Hard Edges figure has not been included in the estimates reported in chapter 4 to avoid extensive double counting. The Hard Edges figure does, however, reinforce the Scottish Government's recent decision to broaden the HL1 definition of repeat homelessness. Now this change is in force, it would be useful to look at what further adjustments to the HL1 and its analysis might provide a clearer picture of the profile of repeat applicants and their housing history, and why previous interventions have failed.

²⁷ ONS report that in the two decades to 2019, the rise in co-residence was heavily concentrated amongst those aged 22 -27 years.

²⁸ Hills and Hirsch (2019) found that the average person in their 20s living at home saved £120 a week in housing related costs.

²⁹ NRS experimental statistics that suggest that in 2018 there were 195 registered deaths involving homeless people; up 19% from the estimate of 164 for 2017. Most are very likely to be people that have incurred multiple disadvantages.

Irregular migrants and others without recourse to public funds

- 3.46 The ETHOS homeless definition includes undocumented and/or irregular migrants, which is the terminology preferred by the UN and the European Commission. The Home Office issues asylum, immigration and resettlement statistics. The only sub-national data are for asylum seekers in receipt of Section 95 support (S95), which provides means-tested financial and housing assistance. In June 2020, some 3,761 out of the 42,289 asylum seekers claiming S95 lived in Scotland. All were in Glasgow which has the biggest asylum seeker population outside London.
- 3.47 Home Office data provide a very partial picture. It is not known if short-term housing for asylum seekers meets minimum standards (COMPASS) or what happens to refused asylum seekers and others living in the UK without full authorisation. The Migration Observatory (2020a) report that available estimates indicate that anywhere from 700,000 to 1.2 million people in the UK may be irregular migrants. They also suggest that a further 1.38 million people with a visa or other valid reason to be in the UK are subject to the 'no recourse to public funds' (NRPF) regime (2020b). This prohibits access to housing benefit and most other state benefits, council housing, homelessness assistance, and other public services. However, all available estimates are highly uncertain.
- 3.48 All too often irregular migrants become destitute and people refused asylum are rendered street homeless due to the convoluted UK asylum decision and appeals process and the NRPF regime (Gillespie, 2012; Dudhia, 2020; and Burns et al, 2020). Visa holders and others with temporary permission to be in the UK do not routinely face the same degree of economic hardship. The Scottish Parliament's Local Government and Communities Committee (2020), however, has expressed concern that COVID-19 has placed many more of them in a vulnerable position.
- 3.49 In the absence of any reliable data on the numbers, let alone housing circumstances³⁰, of irregular migrants and other people subject to NRPF, the sub-group of the population is excluded from the estimates presented in chapter 4. Data improvements are much needed but as immigration is reserved to Westminster it is not clear where responsibility for this should rest. The Taskforce comments on the limitations of devolved competence suggest that ultimately neither Scottish Parliament nor Scottish Government could be held primarily accountable for securing housing rights for people living in Scotland with unsettled immigration status.

AFFORDABILITY

Key considerations

- 3.50 Housing is typically the single largest item of expenditure for households that do not own their home outright and is a key determinant of the right to adequate housing. In the last two decades, housing affordability has become one of the most pressing housing policy issues. In the field of human rights there are similar concerns that growing numbers of people cannot find an affordable place to live that meets their

³⁰ The HL1 and PREVENT 1 ask if an applicant is eligible for assistance, consistent with the most recent NRPF definition. The Scottish Government advise that 330 people were recorded as ineligible for homeless assistance in 2019/20. However, most people who are threatened with or experience homelessness, and are ineligible for assistance, probably never get as far as the homelessness application stage.

needs and that this is pushing more people into poor quality, overcrowded and insecure housing and homelessness³¹.

- 3.51 Housing affordability is shaped by a myriad of factors, not all of which can be directly influenced by housing policy. These include the tenure structure and sufficiency of housing supply in a given locality, household choices and preferences about how much housing to consume relative to other goods, the distribution of income and wealth and the ability of households to borrow from formal (banks etc.) and informal (family) sources. In spite of this, policy discussions on housing affordability have tended to be framed primarily around the insufficiency of housing supply, with policy measures focused on boosting new housing and addressing planning system constraints.
- 3.52 This focus on housing supply has occurred even though there is little consensus about the numbers of newly constructed dwellings required, other than for social and affordable housing, where annual estimates range from 8,000 to 10,600 (Bramley, 2018; and Dunning et al, 2020). Recent evidence also suggests that the role of new supply in relation to affordability has been over-stated. Mulheirn (2019) has shown that, at least at the aggregate level, new supply and accompanying policy measures have had little impact on affordability whilst Miles and Monro (2019) have shown that house price inflation has mainly been attributable to lower interest rates and the growth in average real incomes. This has led Meen (2019) to stress that there are no quick fixes and that supply measures need to be accompanied by demand measures to reform property taxation, address housing benefit deficiencies and restricted credit conditions and, arguably most importantly, deep-rooted growing inequality in income and wealth. The long-range aspirations of *Housing to 2040* acknowledge these complexities.
- 3.53 There is no single accepted definition or measure of housing affordability but the most commonly applied measures are affordability ratios. Of the various affordability ratios available, those based on actual housing costs to net household incomes are generally preferred as they permit the numbers of households paying above a set proportion of their income on housing costs to be established (Affordable Housing Commission, 2019).
- 3.54 Affordability ratios have well-known limitations that generally mean that they underestimate affordability burdens for lower income households and overestimate the burdens for higher income households. As Meen (2018) notes, affordability ratios do not allow for the possibility a household may only be able to spend under a given proportion of their income on housing (say 25%) by living in poor or overcrowded housing (i.e. under-consumption) whereas affluent households may choose to spend a higher share of their income to secure a more desirable home in preference to consuming other goods (i.e. over-consumption). Affordability ratios also assume that all households have equal capacity to pay for food and other outgoings from their (say 75%) residual income regardless of household composition and residual income. In addition, they do not allow for the fact that housing quality and location can impact on utility, maintenance and commuting expenditures.

³¹ See for example the EU Commissioner for Human Rights 2020 blog <https://www.coe.int/en/web/commissioner/-/the-right-to-affordable-housing-europe-s-neglected-duty?inheritRedirect=true>

- 3.55 In response to these and other criticisms, there have been attempts to develop other ways to measure affordability. These include:
- Residual income measures that allow for the interaction between housing costs, household, incomes and non-housing expenditure on necessary goods and services (Stone, 2008).
 - Exploration of the housing consumption behaviour to understand the choices and trade-offs households make regarding tenure, dwelling quality and location (Maclennan and Williams, 1990).
 - The use subjective approaches that ask households to assess their own housing situation (Kearns et al 1995; Bramley, 2012; Green et al, 2016).
 - Attempts to situate affordability in the context of housing quality, neighbourhood conditions, location and transport costs (Thalmann, 2003; Leishman & Rowley 2012; and Mulliner & Maliene, 2016).
- 3.56 These alternative approaches can deepen our understanding of housing affordability and have the potential to enhance policy responses. From the perspective of regularly monitoring housing outcomes, however, these approaches, other than the residual income approach, are arguably too complex, too resource intensive and too data hungry. In spite of their flaws, therefore, ratio-based measures remain a key reference point for the UN, the EU and many Governments due to their common-sense appeal and ease of application.

Potential housing cost affordability indicators

Affordability ratios

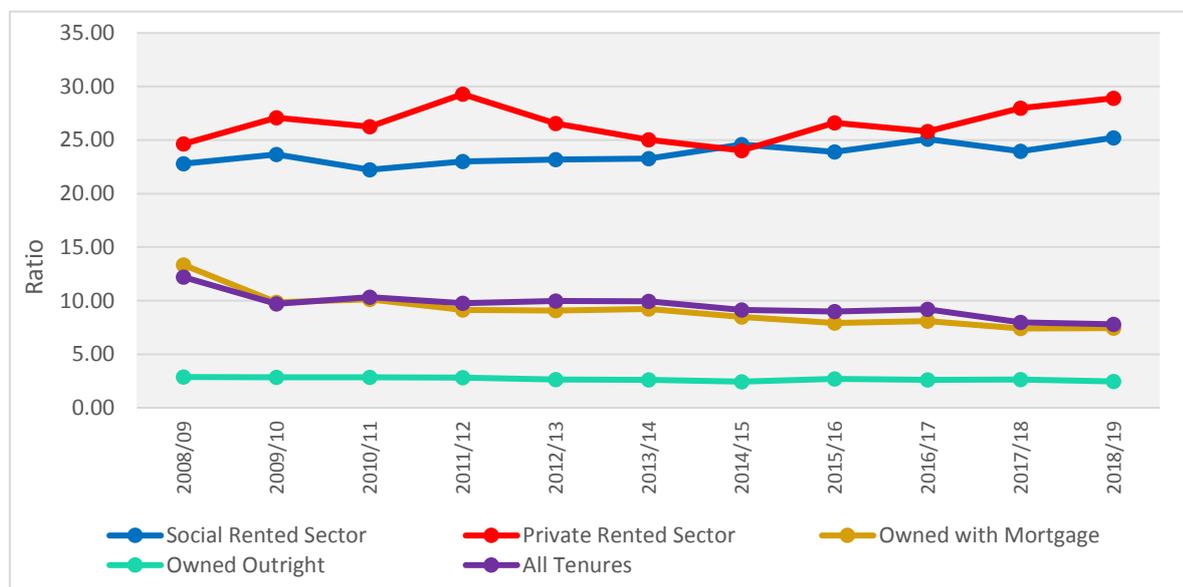
- 3.57 In 2017, the EU Housing Partnership (Rosenfield, 2017) surveyed its members on the definition of housing affordability. Members mainly reported that their country had no official definition of housing affordability. They also reported that affordability ratios were the most widely used measure, most commonly employing a benchmark of 30%. The report also noted that housing costs were variously interpreted and could extend beyond rent and mortgage costs to include property taxes, maintenance expenditure and utility costs³².
- 3.58 The EU survey did not clarify if gross or net housing costs and household incomes were used. However, Bramley (2012) used the household panel survey to show that self-reported payment problems and material hardship validated the use of ratio measures based on gross incomes of 25%. Meen (2018) also found that for renters, ratios measures provided a better predictor of financial stress than their theoretical shortcomings might imply and that a threshold of 25% of gross income, especially for lower income renters, provided a better explanation than 30%³³.
- 3.59 The Scottish Government's Housing and Regeneration Outcomes Framework (2020b) affordability indicator is based on median housing costs to median incomes (see Figure 3.1). This indicator is useful for tracking broad trends and suggests that affordability pressures for households that rent their home have been increasing

³² This reflects the wider definition the EU and OECD employ in measuring housing cost overburden which is defined as a household spending 40% of their equivalised disposable income (excluding housing allowances) on housing costs ('net' of housing allowances).

³³ Interestingly, Meen (2018) based this on gross income net of HB, which presumably was deducted from rent.

gradually over the past decade. However, looked at in isolation, the main Scottish Government 'All Tenures' indicator masks affordability pressures due to the large and growing numbers of households that are outright owners or have low mortgage costs.

Figure 3.1: Median ratio of housing costs to median net unequivalised household income by tenure



Source: SG Housing and Regeneration Outcomes framework 2020 update (FRS annual figures).

Notes: See footnote to Table 3.2 for further details.

3.60 The national indicator does not adhere to the Affordability Commission advice that ratios should measure the numbers of households paying above a set proportion of their income on housing costs. More appropriate are the alternative Scottish Government (2019b) estimates reported in *Social Tenants in Scotland, 2017* and summarised in Table 3.2. Applying these FRS derived proportions to SHS estimates of the number of households in each tenure for 2018 suggests that:

- Around 363,000 households (15% of all households) spent 30% or more of their net income on housing costs.
- Of all households that spent 30% or more of their net income on housing costs, 220,000 were social renters (61%), a further 115,000 were private renters (32%), and 29,000 (around 8%) were homeowners.

3.61 Most of the 29,000 homeowners that spent 30% or more of their net income on housing costs were likely to be recent purchasers for whom affordability pressures may be relatively short lived. However, some would be households that experienced chronic affordability pressures due to a decline in their financial circumstances as a result of retirement, unemployment, relationship breakdown, or the onset of poor health (especially prior to retirement).

3.62 These headline figures suggest that, aside from mortgage credit constraints faced by prospective first-time buyers, affordability pressures are primarily an issue for households that rent their home. That said, the numbers of owners with a mortgage

that face cost burdens of over 30% would be significantly higher if capital repayment costs were taken into account instead of being treated as a form of savings.

Table 3.2: Percent households by tenure spending over 30% of net income housing costs, 2015/16 – 2017/18

	Scotland		England	
	Percent	Sample base	Percent	Sample base
Local Authority	31	1,152	46	3,578
Housing Association	38	792	51	3,960
Social sector	34	1,944	49	7,538
Private rented	42	1,035	53	7,053
Owned with mortgage	3	2,088	5	11,276
Owned outright	1	3,076	1	14,764

Source: Scottish Government (2019) Social Tenants in Scotland, 2017 – Chart 5.17: derived from DWP Family Resources Survey, for the 3-year period from 2015/16 to 2017/18.

Notes:

1. Net income refers to non-equivalised income from all sources, including Housing Benefit and state support, investment income, maintenance payments etc. after deduction that include but are not limited to taxes such as income tax and council tax and pension contributions.

2. Housing costs include gross rent, service charges (including factoring fees), water charges, mortgage interest payments plus for owners' structural insurance premiums and any ground rent.

3. DWP exclude mortgage capital repayments, which are treat as saving rather than a housing cost. Costs for maintenance, repairs and contents insurance are also not included.

4. The FRS definition of a household includes multiple families as well as adults that share their home with unrelated adults. The housing cost burden for people in these households may differ from those reported in the survey if incomes and housing costs are not pooled.

5. The FRS is the Scottish Government's preferred source for analysing income distributions but as a self-reported survey, income and housing cost data are subject to errors in reporting.

6. Despite a recent boost, the FRS sample remains modest and thus 3-year rolling averages are mostly reported, which can conceal rapid changes in the relationship between housing costs and income.

- 3.63 To allow for variations in the financial stress that housing costs can impose on lower and higher income households, Australia employs a 30:40 rule. This assumes that a household is in housing stress if its housing costs (rent and/or mortgage outgoings) exceed 30% of income and the household is in the bottom 40% of the income distribution. UK studies suggest, however, that households, and in particular renters, further up the income distribution may still experience housing stress (Bramley, 2012; Meen, 2018). As a result, this variant was discounted.

Residual income affordability indicators

- 3.64 Residual income measures are the main alternative to affordability ratios. They look at whether households of varying composition have adequate resources after housing expenses to meet food, clothing and other expenditure. They therefore explicitly recognise that households with dependent children have higher levels of non-housing expenditure than single person and couple households.
- 3.65 Traditionally the main limitation of residual income measures has been the tendency to muddle together the measurement of housing affordability and benefit

dependency³⁴. For instance, residual measures used in the 1990s to assess rental affordability tended to apply a percentage uplift to income support levels (such as IS plus 20%) to define 'a socially acceptable standard of non-housing expenditure' for working households (Tang, 2009). More recently, the Minimum Income Standard (MIS)³⁵ has been used in an effort to break away from reliance on social security thresholds (Young et al, 2015). The Scottish fuel poverty standard, which was revised in 2019, also employs a variant of the MIS³⁶.

- 3.66 Residual measures highlight an important policy dilemma. That is, for households in receipt of either Housing Benefit (HB) or the Universal Credit (UC) housing element, shortfalls in their income after housing costs (AHC income) relative to the MIS (or other standard) cannot be resolved by varying rent levels. Both HB and the UC housing element are designed to prevent residual incomes falling below applicable amounts set by social security legislation for households of varying composition. Other things being equal, therefore, a reduction in rent would result in a reduction in HB payment or UC housing element payment. To compound matters, policy measures introduced in the past decade have meant that HB and UC housing element payments no longer necessarily prevent residual incomes falling below prescribed applicable amounts. These measures include the restriction of eligible private rents to LHA rates, the extension of the LHA shared-accommodation rate to single people under 35, the benefit cap and the 'bedroom tax', and have contributed to the rise in destitution and the use of foodbanks (Sosenko et al, 2019).
- 3.67 The Scottish Government's policy emphasis on alleviating child poverty suggests that the use of some kind of MIS-based residual income measure would provide a more appropriate measure than affordability ratios for measuring housing cost burdens.
- 3.68 The practical problem for the present study was that, in order to minimise double counting, it was necessary to rely heavily on the Scottish Household Survey (SHS) to estimate the numbers of non-homeless households that appear to fall short of realising their right to adequate housing. Due to this and resource constraints, the only practical option was to employ an affordability ratio and to set a threshold of upwards of 25% of net incomes. As discussed in chapter 4, this threshold was set only after cross-checks against MIS rates were carried out.
- 3.69 Another possible indicator might be to look at what is termed 'housing cost induced poverty'. This refers to households that are not at risk of relative poverty before housing costs (BHC) but are at risk of relative poverty after housing costs (AHC) have been paid. However, for reasons discussed in appendix 4, it was decided that housing cost induced poverty, as measured by the difference between the numbers of households in BHC and AHC relative poverty, was not an appropriate basis for assessing housing affordability.

³⁴ Residual income measures, like affordability ratios, also ignore what households purchase in terms of location and housing quality.

³⁵ The MIS was developed and continues to be annually updated by Hirsch and colleagues (2020) at Loughborough University on behalf of the JRF. They use participatory methods to identify and periodically update a basket of goods and services households of varying composition should be able to consume and then update the price of the basket each year to allow for inflation in the price of the items in the basket.

³⁶ See: <https://www.gov.scot/policies/home-energy-and-fuel-poverty/fuel-poverty/>

HABITABLE HOUSING WITH THE NECESSARY SERVICES AND FACILITIES

Key considerations

- 3.70 Housing quality is a broad term that covers the physical structure, design, size and condition of a home. It therefore encompasses what the UN terms habitability. It also includes what the UN terms services and facilities, such as safe drinking water, sanitation, utilities and heating. As both the Tolerable Standard and the Scottish Housing Quality Standard (SHQS) measure these two sets of conditions, discussion of both have been combined below. There is also significant overlap between housing quality and accessibility, but for ease of reference issues such as overcrowding and wheelchair housing are discussed under accessibility.
- 3.71 Housing conditions throughout Scotland have improved beyond recognition since the Tolerable Standard was introduced in 1969. This has been driven by policy efforts to raise standards, underpinned by a recognition that good quality homes contribute to healthy living and well-being.

Table 3.3: Indoor stressors and the health risks they pose

Housing Circumstance	Health Impact
Dampness, condensation alongside associated fungal and mould growth	Respiratory infections and problems (asthma, chronic bronchitis, rhinitis and alveolitis) gastrointestinal upsets and diarrhoea, allergic reactions, nausea, eczema and (especially for women) depression and anxiety.
Cold and hard to heat homes	Excess winter deaths (linked to hypothermia, cardiovascular and respiratory conditions) and higher risk of heart attack or stroke, breathing problems, flu, depression and falls.
Overcrowding	Transmission of infectious diseases (including COVID-19), respiratory problems, accidental deaths, anxiety, depression and developmental delay.
House dust mites	Allergies and respiratory problems.
Sanitation	Water born infections.
Asbestos	Inhalation of asbestos fibres causes mesothelioma and lung cancer.
Lead	Lead poisoning which can adversely affect neurological and intellectual development.
Radon gas	Lung cancer.
Noise, especially at night	Sustained exposure, to noise can impair hearing and trigger elevated blood pressure and lead to ischaemic heart disease. It can adversely affect children's learning and lead to cognitive impairment in children.
Hazards linked to home accidents (poor design and maintenance)	Injuries and deaths due to falls, fires, burns, carbon monoxide and other poisoning.
Sources: Maclennan et al 2011; Turkington et al 2010; and Marmot, 2010.	

- 3.72 A large and expanding body of research has explored the links between housing and health, albeit more in relation to physical than mental health. The relationship between housing and health is complex and the evidence continues to be dogged by conflicts over study methods and difficulties disentangling poor housing conditions from other forms of disadvantage. Nonetheless, systematic reviews of the research literature

have concluded that there are strong associations between housing conditions and a variety of health complaints (see Table 3.3), such that:

- Indoor stressors, and in particular damp, cold and overcrowded homes, are closely linked to poor health outcomes, most notably respiratory problems, depression, anxiety, and delayed child development.
- Sustained exposure to indoor stressors poses the greatest risk for children, older people and those with existing illnesses.
- Ill health associated poor living conditions adds to the costs of delivering health, education and other public services.
- Renovations are associated with some improvement in self-reported health but their potential to reduce the burden placed on other services is under-researched.

- 3.73 The SHQS was introduced in 2002 with the aim of ensuring that by 2015 social tenants lived in housing of a good quality. To this end, it required social landlords to meet minimum standards across some 50 housing elements. Since then, the policy drive to transition to a low-energy and low-carbon economy has seen the SHQS energy efficiency component replaced by the Energy Efficiency Standard for Social Housing (ESSH). This requires social housing attain progressively higher energy efficiency standards, culminating in EPC Band B by 2032.
- 3.74 Policies to progressively improve standards for private housing have been much slower to emerge. Thus, the 'condemnatory' Tolerable Standard remains the only statutory measure of housing quality across all tenures.
- 3.75 For private landlords, compliance with the Tolerable Standard has been reinforced by the introduction of the Repairing Standard, which requires them to adhere to basic levels of repair. In addition, planned measures will see quality standards in this sector become more closely aligned with the SHQS. These include a modified Repairing Standard from 2024 and Regulations that will require private rented homes to attain EPC Band C by 2028 (to replace the pre-COVID-19 target of EPC Band D by 2025).
- 3.76 Owner occupiers currently only have a duty to meet the Tolerable Standard if, and when, a local authority takes action to compel them. Following the Grenfell Tower fire in 2016, the Tolerable Standard has been amended so that going forward, all homes must be fitted with equipment for detecting and for giving warning of fires and carbon monoxide. Arrangements for monitoring and policing this new provision are, however, somewhat vague.
- 3.77 It is not yet clear how policy ambitions for all homes in all tenures to attain EPC Band C by 2035³⁷ will be achieved in the owner occupier sector. That said, the Scottish Government's *Draft Heat in Buildings Strategy (2021b)* suggests that regulations will be introduced at some point between 2023 and 2025 to ensure owner occupied homes attain this standard by 2035 or at earlier trigger points, such as when a property is sold or renovated. The adoption of the EPC Band C benchmark is supported by the National Institute for Health and Care Excellence (NICE, 2015). It

³⁷ The Draft Heat in Buildings Strategy confirms that all homes (if technically feasible and cost-effective) are energy efficient by 2035 and use zero emissions heating and cooling systems by 2045. Multi-tenure or mixed-use buildings will be given until 2040-45 to achieve both. These targets form part of the wider commitment in relation to climate change commitments to 2045.

has suggested “*properties should be raised to a Band C (69–80) and ideally, to a Band B (81–91)*” to limit excess winter deaths and illness associated with cold homes.

3.78 *Housing to 2040* stated that a new tenure-neutral Housing Standard for new and existing homes will be phased in between 2025 and 2030, which will be aligned to the evolving energy efficiency standards. For now, it is not clear what this new standard might look like and if it will include both a ‘condemnatory’ standard and a higher ‘minimal occupation’ standard. There are also questions yet to be answered in relation to the enforcement and financing of upgrading existing homes, especially older tenements and other dwellings in multiple ownership where common repairs have often proved problematic.

Applicability of the Scottish Housing Quality Standard

3.79 The SHQS only applies to social housing but the proposed tenure neutral quality standard suggests that adopting the SHQS, in whole or in part, as a cross-tenure outcome indicator for the right to habitable adequate housing may be an appropriate interim measure. Looking at each of the five main SHQS components and data from the Scottish House Condition Survey (SHCS) for 2018 and 2019:

- Around 40,000 homes (2%) are Below the Tolerable Standard (BTS), which includes services such as electrical systems and lead piping (in so far as it adversely affects the water supply). As this is the only cross-tenure measure of housing quality, it has to be one of the core indicators on habitability.
- Around 2,000 dwellings (0.10%) are in serious disrepair, many of which are also BTS. However, adequate housing implies homes should be in a reasonable state of repair rather than in serious disrepair. Possible alternative options for this component are therefore considered below.
- Around 32% of homes fail the original SAP-based SHQS energy efficiency criteria. These SAP standards vary by dwelling type but tend to fall within EPC Band D³⁸. The CESCRC do not refer to energy efficiency but it does expect fuel poverty and carbon emissions to be progressively reduced. Alternative options for an energy efficiency measure are therefore explored below.
- Some 7% of homes lack modern facilities and services. This component centres on ensuring kitchen and bathroom facilities are of a good quality. It is a matter of judgement, but this category appears to exceed the CESCRC requirements. It also sets higher standards than implied by the current Repairing Standard. Hence, this category was discounted from further consideration.
- Some 12% of dwellings fail the healthy, safe and secure component. This covers a diverse range of 14 elements such as safe electrical, gas and oil systems, lead piping, adequate door locks and the upkeep of communal areas. This component was adopted in full. In addition to being in line with the ethos of the CESCRC definition of adequate services, it reflects planned revisions to the Repairing Standard and is included in the Scottish Government’s Housing and Regeneration Outcomes Framework.

3.80 In short, the SHQS has not been adopted wholesale. Instead, category 1 and 5 have been supplemented, as discussed below, with alternative measures for category 2

³⁸ In contrast, the 2020 SHCS data will use the EESSH which straddles EPC Bands C and D.

(serious disrepair) and 3 (energy efficiency). In addition, the following discussion looks at the issue of dry homes in light of the fact that damp and mouldy environments may cause a variety of health effects.

Potential indicators

Major disrepair

- 3.81 A dwelling in disrepair is more likely to be energy inefficient and to pose health hazards. The SHCS employs different definitions of disrepair (see Table 3.4) but the single most important definition is critical repair. It is based on the core elements that are vital to ensuring a dwelling is wind and watertight tight and structurally stable. Consequently, it covers disrepair to components such as the roof structure and covering, external and other load-bearing walls, foundations, damp proof course, chimneys and so on. These core elements are, to a greater or lesser extent, also embedded in the SHQS, the Scottish Building Regulations and the Repairing Standard. Critical disrepair is also included in the Tolerable Standard in the sense that dwellings can be judged unfit due to dampness, structural instability and lack of satisfactory ventilation and drainage.
- 3.82 According to the SHCS, the proportions of homes that require repair to critical elements, no matter how small or insignificant, fell from 61% in 2012 to 52% in 2019. This provides a useful indication of the overall state of repair of Scotland's housing stock. However, what is required is a suitable indicator for levels of major disrepair and this is more challenging to identify.
- 3.83 The SHQS serious disrepair measure sets a low benchmark for disrepair relative to the Decent Homes Standard employed in the rest of the UK. The SHQS serious disrepair measure is made up of primary and secondary elements. If any single primary element is in substantial disrepair, the dwelling will fail the SHQS but in the case of secondary elements, two such failures are required. In contrast, the failure of roof covering and some other secondary components alone would be sufficient to fail the Decent Homes Standard.
- 3.84 An alternative option to the SHQS serious disrepair measure would be to base this indicator on the estimated 25,000 occupied homes (1%) that have "extensive disrepair to one or more critical elements". This is the indicator adopted for chapter 4. This measure is more closely aligned to the Decent Homes disrepair standard but its selection also reflects data availability. The SHCS no longer reports on repair cost estimates. This means that the ability to look at how different disrepair measures 'fit' with the distribution of disrepair costs (per dwelling or per m²) in order to enhance confidence in the selection of a suitable disrepair indicator has been lost.
- 3.85 More generally, *Housing to 2040* set out commitments to reform the tenement model. This builds on calls from the Scottish Parliamentary Working Group on Tenement Maintenance for new legislation on common repairs and factoring by 2025. In light of this and the heightened concerns about building safety since Grenfell, it is disappointing that questions on such matters were more or less all cut from the 2018 and 2019 SHS/SHCS surveys.

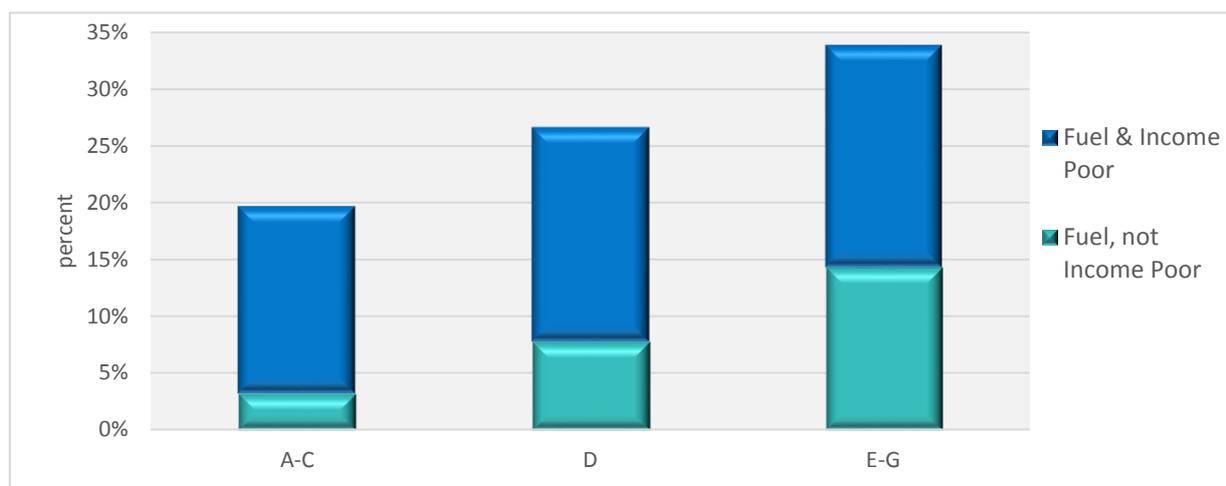
Table 3.4: Disrepair Categories, Proportions of Scotland's Housing Stock 2019

Category of disrepair	Homes	
	No ¹	%
Any disrepair: Includes all of categories below plus any basic repair required beyond routine maintenance	1,747,000	70 ²
Critical disrepair: Disrepair to building elements central to weather-tightness, structural stability and preventing deterioration of the property, no matter how small	1,298,000	52
Urgent disrepair: Repair to external and common elements needed immediately (no matter how small) to prevent risk of damage or risk to health and safety of occupants	674,000	27
Extensive disrepair: Damage covers 20% or more of the building element area	150,000	6
Disrepair to non-critical elements only (skirting boards, internal wall finishes, boundary fences etc.)	449,000	18
Disrepair to critical elements		
Dwellings with urgent disrepair to one or more critical elements	474,000	19
Dwellings with extensive disrepair to one or more critical elements	25,000	1
Dwellings with any disrepair to critical elements, any urgent disrepair (to any elements) and any extensive disrepair (to any elements) ³	75,000	3
Serious disrepair (SHQS)		
Serious disrepair: 1+ key building components need replacing or major repair (foundations, wall structure, roof structure etc.) OR 2+ secondary components (roof covering, chimneys, rainwater goods, damp proof etc.) need replacing or major repair.	2,000	0.10
Source: SHCS, 2019 key findings and tabular outputs and Newhaven analysis.		
Notes:		
1. The estimated numbers of dwellings in disrepair have been rounded to the nearest thousand and are intended to be illustrative. Small sample numbers mean there is much uncertainty around these estimates.		
2. 70% excludes a very small number of cases where disrepair status was not comprehensively recorded.		
3. This is a count of properties with each type of disrepair but this may be due to different elements, including urgent or expensive disrepair to non-critical elements.		

Energy inefficient homes

3.86 The Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 revised the definition of fuel poverty. A household is considered fuel poor if more than 10% of its AHC income is required to be spent on fuel *and* they have insufficient money remaining (after deducting fuel costs, childcare costs and any benefits received for a disability or care needs) to meet an adequate standard of living, which is set at 90% of the Minimum Income Standard.

Figure 3.2 Proportion of households in EPC Bands classed as fuel poor and whether also income poor, 2019



Source: SHCS tables, 2019

3.87 SHCS fuel poverty estimates are based on a self-reported household income plus modelled energy requirements and fuel costs. SHCS estimates of fuel poverty will not be fully compatible with the revised definition until at least December 2021. There are also inevitable uncertainties around household incomes, fuel prices and energy requirements. The SHCS 2019 estimates should therefore be treated with some caution, but they suggest that:

- Some 613,000 households were fuel poor (25%), of which 448,000 were also income poor (73%) according to the SHCS estimate of AHC relative poverty³⁹.
- Some 221,000 fuel poor households occupied an EPC A-C rated dwelling, of which 84% were also income poor (see Figure 3.2).

3.88 There are limits to what improvements in the quality and energy efficiency of homes alone can deliver in terms of reducing fuel poverty. This suggests it is more appropriate to focus on energy efficiency rather than fuel poverty as a measure of adequate housing. Adopting variable SAP ratings for different types of dwelling, would perhaps be a good option but this has been ruled out. Apart from the fact that SAP distributions are not routinely reported, SAP ratings are more difficult for people to understand than EPC Bands.

3.89 Consistent with planned regulations for the energy efficiency of private homes, this indicator has been set to count households that occupy a home with an EPC Band D or below. As Table 3.5 shows, around 1,377,000, households (55%) are considered inadequately housed according to this indicator alone. This figure may be somewhat inflated. The non-invasive nature of the SHCS physical survey means that insulation standards can be under reported and can result in some dwellings being assigned to a lower EPC Band than might be the case. To allow for this a variant of the central estimate has been produced that is based on homes with an EPC Band E and below. Around 361,000 households (14%) occupy a home with an EPC rating of Band E-G,

³⁹ The income poor estimates do not correspond precisely to AHC relative poverty due to SHS/ SHCS data limitations, including the fact income is based on householder and any partner as opposed to all members of a households.

of which 34% are fuel poor. As Figure 3.2 illustrates, non-income poor households are at relatively greater risk of fuel poverty if they live in an EPC Band E-G dwelling.

Table 3.5: EPC Band by Tenure in 2019, SAP 2012

EPC Band (SAP rating)	Owner occupied		Private rented		Social sector		All Tenures	
	000s	%	000s	%	000s	%	000s	%
A (92-100) or B (81-91)	39	3	9	3	44	7	92	4
C (69-80)	601	39	117	37	308	49	1,026	41
D (55-68)	648	42	123	39	246	39	1,016	41
E (39-54)	189	12	32	10	29	5	250	10
F & G (1-38)	73	5	32	10	6	1	111	4
Total	1,550	100	312	100	634	100	2,496	100
Band D and below	910	59	187	59	281	45	1,377	55
Band E and below	262	17	64	20	35	6	361	14

Source: SHCS tables, 2019 – note no dwelling was classed in EPC Band A in 2019

Dry homes

- 3.90 Penetrating and rising damp usually result from building defects whereas condensation can result from inadequate heating, ventilation and thermal insulation. It can also be aggravated by rising or penetrating damp, overcrowding, fuel poverty and the way householders manage heating and ventilation systems, and whether these systems are 'user friendly'. Irrespective of the cause, the WHO (2009) has identified that keeping homes dry and preventing condensation is vital for healthy buildings. Ensuring homes are dry prior to undertaking energy efficiency measures and installing low-carbon heating technologies is especially important.
- 3.91 In 2019, dampness and/or condensation was present in 9% of dwellings and there has been minimal change in this rate in recent years (see Table 3.6). It could be argued that it would be inappropriate to use these headline figures as an indicator of inadequate housing as this count is not confined to cases that may pose a significant housing quality or health problem. In terms of severity, the SHCS indicates that around 13,000 dwellings were classed as BTS due to serious dampness, which equated to a third of all BTS dwellings. The SHCS does not report on the severity of condensation, even though surveyors are asked to rate the extent of condensation in each assessed room from zero to 40+%.

Table 3.6: Presence of Damp and/or Condensation in 2017-2019

Defect	2019		2018		2017	
	000s	%	000s	%	000s	%
Condensation	192	7.7	220	8.9	185	7.5
Rising and / or penetrating damp	54	2.2	73	3.0	60	2.4
Any sign of damp /or condensation	228	9	268	11	228	9
<i>Of which condensation and any damp</i>	<i>18</i>	<i>0.7</i>	<i>26</i>	<i>1.0</i>	<i>19</i>	<i>0.8</i>

Source: SHCS 2019 tables

Notes:

SHCS table 58 is based on sample of between 2,964 and 3,002 surveys each year.

Surveyors are specifically asked to discount condensation on glazing but otherwise are asked to record an instance of dampness and condensation, including a small patch on one kitchen wall that can occur due to a lack of ventilation whilst cooking.

- 3.92 The limited reporting of dampness and condensation may reflect a lack of policy interest in this topic relative to 20 years ago, as the numbers of affected dwellings have changed little. In 2002 there were 229,000 such dwellings. There are also unresolved issues around the assessment of condensation, such as the lack of an agreed benchmark for unacceptable levels of condensation and a standardised method for testing relationships between condensation, air quality and mould growth. For now, therefore, it is not possible to report on an objective measure of dry homes that is distinct from the Tolerable Standard.

ACCESSIBILITY OF HOMES

Key considerations

- 3.93 In assessing the adequacy of housing, it is necessary to look beyond the sufficiency of the total number of dwellings and consider mismatches between the stock of housing and the size, type and design of dwellings people want or need. As the Special Rapporteur (2017 and 2018) has observed, access to a suitable home is central to a person's ability to maintain dignity, to feel safe and secure and their opportunity to attain their potential and be active members of their community.
- 3.94 Households want and need different things from their home at different points. A good quality dwelling that is suitable for a person's household today can become overcrowded if the household grows. Likewise, it can become unsuitable if someone within the household develops a disability. Barriers that prevent a person's household from moving home or modifying their home can therefore 'trap' adults and children within the household in situations that can limit their life chances. It may also increase demands placed on health, social care and other services.
- 3.95 Disadvantaged groups generally have less capacity to express their housing requirements as effective demand in the housing market. The Special Rapporteur (2020) has therefore underlined the need for States to take 'necessary and appropriate' action to ensure there is adequate supply of affordable and appropriate homes for disadvantaged groups and that housing programmes and services are non-discriminatory in their effect.

Disability

- 3.96 The Convention on the Rights of Persons with Disabilities (CRPD) issued General Comment 5 in 2017. This requires States to ensure there is sufficient, suitable and affordable housing to allow disabled people the opportunity to choose their place of residence, and where and with whom they live. The CRPD (2014) has also called for 'strict application' of universal design principles and accessibility standards in building regulations for the design of new homes and estates, and for States to identify and eliminate barriers to accessibility within the existing stock of housing.
- 3.97 Against this backdrop, the EHRC (2018) conducted a wide-ranging review of the housing rights of disabled people. This review concluded that these rights have not been effectively protected in Scotland or elsewhere in Britain. It found that disabled people often experienced long waiting times before their housing needs were resolved, due in large part to shortages of suitable housing and insufficient resources to support housing adaptation. It also noted that those living in the private rented sector also faced problems because landlords were often reluctant to allow

adaptations. In addition, it found that people with complex needs remained at considerable risk of having to move to, or remain in, institutions. The EHRC therefore called for urgent policy action, backed by sufficient resources, to address the needs of disabled people, including wheelchair users. In particular, it called for affordable and suitably designed or adapted homes that catered for the specific needs of a disabled adult or child plus the needs of other household members.

- 3.98 In response to the ‘sobering picture’ painted by EHRC, and the projected growth in older and disabled persons, *Housing to 2040* has set out measures to enhance independent living. Apart from continuing to ask local authorities to set and monitor targets for wheelchair accessible homes, a retrofit programme to enhance the accessibility and digital connectivity of social homes is to be established. It also confirms long awaited work to update the Housing for Varying Needs Design Guide for new social housing that was issued in 1999 will proceed, as will work to establish a Scottish Accessible Homes Standard for all new homes. Other commitments, such as streamlining the housing adaptations system and improving integrated working with health and social care mostly restate commitments made for much of this last decade.

Domestic abuse

- 3.99 The European Commissioner for Human Rights (2010) has highlighted the persistent gap between legal recognition of women’s right to adequate housing and the reality in practice. This is ascribed to discriminatory attitudes and the more limited financial, political and legal resources available to many women to challenge violations to their housing rights. The OHCHR (2012b) has said that for a home to be adequate, it must be safe and offer protection from domestic abuse, not least because of the devastating effect this can have on a woman’s health and wellbeing. This has been reinforced by the Special Rapporteur (2020b) who has called for greater effort to assist those vulnerable to domestic abuse, including the provision of safe housing, especially during the pandemic.
- 3.100 Domestic abuse is one of the most under-reported offences (Flatley, 2016) but Police Scotland still recorded 60,640 such cases in 2018-19, of which 88% occurred within a home. The British Crime Survey figures also indicate that, on average, a victim may experience 20 incidents of domestic violence, which often increase in severity over time. Women are not the only people that experience domestic abuse⁴⁰ but it is widely accepted that a lack of housing options is one factor why women often stay in, or return to, abusive relationships and why women fleeing domestic abuse often have to go down the homeless route (Scottish Government, 2010).
- 3.101 Statistics confirm domestic abuse is a major cause of statutory homelessness in Scotland. In the decade to 2019-20 around 5,000 homeless applicants each year stated that a violent or abusive household dispute was their main reason for applying, most of whom are women. These figures underestimate the scale of the problem, as women do not always disclose that they are suffering domestic abuse when first making a homeless application. Homelessness statistics also do not yet reflect the recent extension of the legal definition of domestic abuse to include coercive control.

⁴⁰ Young adults and people who identify as LGBT are amongst the other social groups for whom domestic abuse is an issue.

- 3.102 Aside from temporary homelessness provision, accommodation for women fleeing domestic centres on refuges run by voluntary sector organisations in partnership with local authorities. Scottish Women's Aid Census figures from 2017 to 2020 indicate that around 347 women and 341 children reside in a refuge at any point in time. Aside from a shortage of provision, barriers to accessing refuge space include language barriers and having more complex needs (Bramley et al, 2019). Some refuges are also not fully accessible for disabled people (Dore, 2019).
- 3.103 Inconsistent allocations policies and social housing shortages contribute to the difficulties women experience in accessing a sustainable home after leaving a refuge or other temporary housing. Sanctuary Schemes, which provide practical security measures (e.g., changing locks etc.) to enable a woman to remain in her home if the perpetrator has vacated the home, also remain relatively uncommon in Scotland (Dore, 2019).
- 3.104 The Scottish Government has invested in measures to tackle domestic abuse, which is seen as a prerequisite to tackling gender inequality. However, as the *Equally Safe: Scotland's Strategy to Eradicate Violence Against Women* (2018) called for a stronger multi-agency approach to prevent homelessness amongst those experiencing domestic abuse and, where this is not possible, respond to homelessness. Building on this, guidance was published in 2019 to support social landlords develop a more effective response to domestic abuse⁴¹. Central themes of this guidance were the need for collaborative working, supporting individuals to exercise their right to choose their own housing options, and enabling women to choose, if they want, to remain in their family home. These themes were reiterated in the Scottish Government Working Group (2020) report on improving housing outcomes for those subject to domestic abuse. In a similar vein, *Housing to 2040* contains commitments to look at how women in the private rented sector might be supported to remain in the family home.

Potential indicators

Overcrowding

- 3.105 Overcrowding is an issue that relates to both the accessibility and affordability of housing. Lower income households, minority ethnic groups and multi- generational households are at most risk of living in overcrowded homes (ONS, 2020), which can place strain on family relationships, reduce privacy and limit the space for children to study or play.
- 3.106 Overcrowding is one of just two housing indicators included in the Scottish Index of Multiple Deprivation (SIMD). It is also one of the few legally defined standards of adequate housing in Scotland. *Housing to 2040* is largely silent on the matter of overcrowding. This is in spite of the fact that the legal definition has remained substantively unchanged since the 1960s, which raises issues about its continued suitability for the 21st Century. It is an offence to breach the statutory definition of overcrowding but there have been very few instances where a local authority has

⁴¹ <https://womensaid.scot/wp-content/uploads/2019/08/Domestic-abuse-guidance-for-social-landlords-FINAL.pdf>

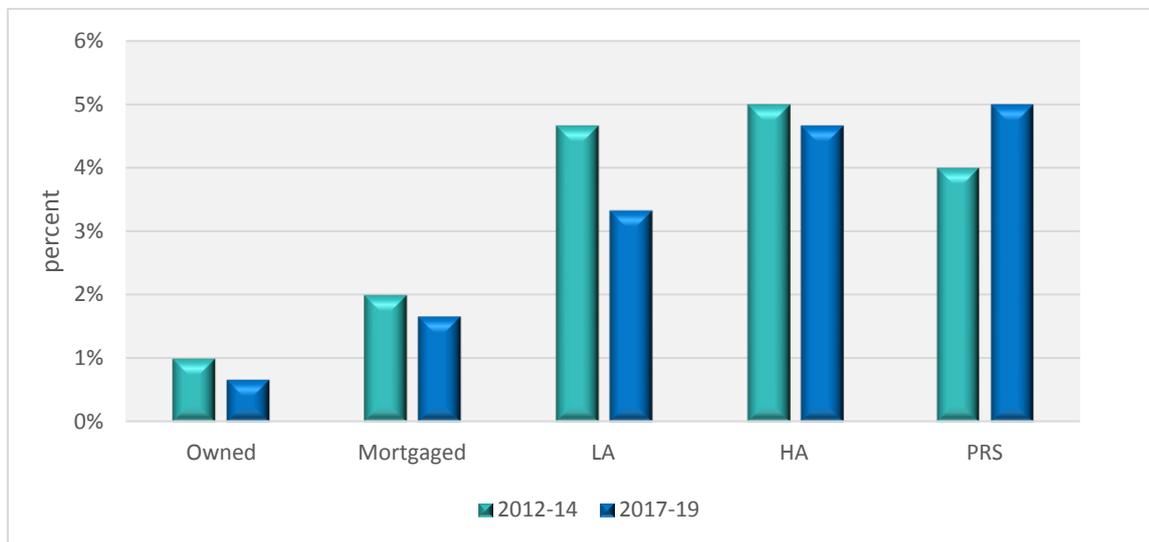
taken action against landlords on a tenant’s behalf or where cases have been referred to the Tribunal, in respect of private tenants.

3.107 The SHS and the Census are the main data sources for estimating overcrowding⁴² and both use a variant of the bedroom standard. The SHS measure is reasonably similar to Eurostat and OHCHR measure of overcrowding but it is an ‘approximation’ rather than a precise measure of overcrowding⁴³. It takes account of the room standards but not the space standards set out in the Housing (Scotland) 1987 Act definition of overcrowding⁴⁴. As Bramley and Besemer (2011) put it:

“Britain suffers (compared with most other countries) from the complete failure of our surveying profession to measure the actual size of dwellings in m2. Thus, houses might have enough bedrooms but it may be difficult to actually get the requisite beds and other furniture, let alone the people, into them!” (p13)

3.108 The SHS 2019 suggests that around 51,000 households were living in overcrowded homes. There has been little change in the rate of overcrowding (2%) since 2012 but it is now significantly lower than for England (4%), where the rate has been increasing. This suggests housing system pressures are rather lower in Scotland than in England. Households who rent their home, particularly from a private or RSL landlord, are more likely to be overcrowded. Three year rolling average rates suggest that overcrowding in the social rented sector has fallen in recent years but has been increasing in the private rented sector. This may be linked to the growth in the numbers of households with children that now rent privately (see Figure 3.3).

Figure 3.3: Overcrowding by tenure, three-year average 2012-14 and 2017-19



Source: Scottish Household Survey – annual tabular and micro data from 2012 to 2019

⁴² Overcrowding estimates can also be from the longitudinal Understanding Society Survey but summary tabular outputs for overcrowding and other measures are not routinely published from this dataset, which is intended mainly for academic analysis.

⁴³ It is fairly commonplace for estimates of legally defined measures to rely on proxies.

⁴⁴ <https://www.legislation.gov.uk/ukpga/1987/26/partVII/crossheading/definition-of-overcrowding>

3.109 The SHS allows overlaps between different indicators of adequate housing to be explored and double counting to be filtered out. The limitation is that the small numbers of overcrowded households identified in the survey each year hinders analysis of the composition of households exposed to overcrowding. This is why Figure 3.3 combines data for three years. Deriving overcrowding estimates from the full SHS survey (c. 10,000) rather than the SHCS sub-sample (c. 3,000 sample) might improve the ability to monitor overcrowding across different social groups.

Housing adaptations

3.110 Adaptations play a pivotal role in supporting people so that they can live independently in their own homes. As the EHRC (2018) noted, however, unmet need for adaptations remains substantial and funding arrangements continue to deliver unequal outcomes for disabled people living in different locations and different tenures.

3.111 The SHS is the only known Scotland-wide source of data for regularly estimating unmet need for adaptations to the home. In 2019 around 14% of all households included a person with a long-term limiting illness that required adaptations to their home but only 2% of households had an unmet need for adaptations. The most common outstanding adaptations were relatively simple to install, such as grab rails. The SHS most likely under-estimates the share of households with an unmet need for adaptations to their home:

- Between 2014 and 2019 the proportion of households that contained a person with a limiting long-term illness increased by 5% to 41% but the numbers with an unmet need for a housing adaptation fell from 76,000 to 50,000. The EHRC (2018) findings suggest this is not very probable.
- The way the relevant questions are framed in the SHS means that the adaptation needs of people with sensory impairments, learning disabilities or with autism spectrum disorders may be under-reported. This tends to mirror practice on the ground, in the sense that the needs of these different groups are often not well served by current housing adaptation arrangements.
- There are wider issues around variable understanding of home adaptations amongst both survey participants and the wider public, especially for those with little, if any, contact with services. This may be especially apparent in terms of major adaptations such as widening doors for wheelchair access or fitting glass cupboard doors for people with dementia.

3.112 There is a paucity of comparable and routinely updated national data about how people access and experience home adaptations and whether adaptation services enhance the ability of people to meet their changing needs and age in place. As the UK has ratified the Convention on the Rights of Persons with Disabilities (CRPD), a key component of the work to streamline housing adaptations should be to improve monitoring of outcomes, especially across 'protected' groups.

Vulnerable households that do not occupy a home that meets basic accessibility standards

3.113 The CRPD requirements suggest there should be an outcome indicator based on the numbers of households that contain a person with a limiting health condition or

disability that live in homes without barriers to accessibility. The EHRC (2018) reported that data on both the numbers of existing and newly constructed wheelchair and other accessible homes were unavailable. This finding is not strictly accurate but the limited availability of data currently precludes the development of an appropriate indicator.

- 3.114 The SHCS physical survey questionnaire collects data on the accessibility of a dwelling. It appears this data has not been analysed since it was reported that there were around 65,000 barrier free homes in 2002, virtually all of which were in the social rented sector (Communities Scotland, 2005). Pending development of the new Scottish Accessibility Standard, it might be useful to re-instate the SHCS barrier free measure or some other measure of the numbers of homes that meet basic barrier free standards and thus contain a level access entrance, a flush threshold, sufficiently wide doorsets and circulation space, and a toilet at entrance level.
- 3.115 Another possibility might be to explore the adoption of the Housing Health and Safety Rating System (HHSRS). House Condition Surveys elsewhere in the UK all produce estimates for different HHSRS hazards. One set of hazards relate to 'risk of accidents within the home'. Amongst other things, this assesses the risk of falls within the home. The adoption of the HHSRS 'risk of accidents' component would necessitate adjustments to the SHCS physical survey and the training and support for surveyors, but it could improve understanding of the accessibility of the existing housing stock.
- 3.116 In terms of new supply, the Affordable Housing Supply Programme (AHSP) Out-turn Report indicates that in 2018-19, some 96% of the 5,375 new build homes that received Scottish Government funding attained at least the lower 'Housing for Varying Needs (HfVN) standard. This report has also started to identify how many homes are purpose built for older and disabled people. Again, in 2018-19, a total of 922 such homes were completed, including 268 specifically designed for wheelchair users (Scottish Government, 2020h).
- 3.117 Turning to private housing completions, the Scottish Government NB1 & 2 statistical returns that local planning authorities are required to complete include provision for wheelchair housing, sheltered wheelchair housing and other 'specialist' provision to be recorded. As the Scottish Government do not publish this data, few local authorities appear to routinely record and supply this data. The CRPD and Human Rights Bill suggests this situation should be revisited.

Disabled people trapped in hospitals or care homes

- 3.118 The EHRC (2018) quoted 'Good Life Group' estimates that in 2017 some 600 people in Scotland had been in a hospital setting for more than a year but have no discharge date⁴⁵. The EHRC also reported that there were people living in care homes or a hospital setting that could live independently but who were prevented from doing so because of a lack of accessible or adaptable housing. However, hard data to support this anecdotal evidence continues to be lacking. Part of the reason for this is that, as I-Hub has reported, the quality of delayed discharges classed as code 9 (which is where cases awaiting adaptations etc are coded) or 'other' is of very variable quality.

⁴⁵ It has not been possible to obtain an updated figure.

- 3.119 One or two simulation models have been developed elsewhere in GB to estimate and project potential numbers that might benefit from a move from a hospital or care setting to a housing setting. However, the assumptions on which these models are built are either derived from English trends or are based on unsubstantiated assumptions about the numbers of people that would apparently benefit from extra care housing.
- 3.120 Overall, this is an area where data are lacking. Although relatively small numbers of individuals are affected, it hinders efforts to monitor whether actions to reduce people trapped in hospital or care settings due to the lack of suitable housing are having a positive impact.

Households trapped in inappropriate housing due to domestic abuse

- 3.121 As noted already, there is a need to update the homeless statistical return to be consistent with the legal definition of domestic abuse, which includes 'coercive control'. That said, to minimise double counting, outcome indicators for those denied their right to adequate and safe housing as a consequence of domestic abuse should probably not be based solely on homeless statistics. The practical problem is that other than homeless statistics, there is a lack of comparable and regularly collected data to measure and track changes in the numbers of women and children that are denied their right to adequate housing as a consequence of domestic abuse.
- 3.122 One possible option, albeit not an outcome measure, might be to compare the level of actual refuge provision against the levels recommended by the Council of Europe (2008). It suggested that where shelters form part of a wider strategy and programme of interventions, there should be one family place per 10,000 women. Ideally this should be accompanied by data on the quality and accessibility of refuge provision.
- 3.123 Another option might be to focus on prevention and to capture data on the numbers of women actively supported to remain in their home. The Domestic Abuse (Protection) (Scotland) Bill just passed by the Scottish Parliament will permit social landlords to take immediate action to remove perpetrators from a tenancy as part of a package of support to prevent women having to present as homeless. Having data on the number of actively supported cases could help to demonstrate that any future reductions in the numbers of households that apply as homeless due to domestic abuse could be attributed to changes in the working practices and culture of housing providers.

CULTURAL ADEQUACY

Key considerations

- 3.124 Cultural adequacy requires housing to be responsive to the distinctive requirements of individuals and communities from different cultural, religious, ethnic or linguistic backgrounds that may or may not be in a disadvantaged position. According to the UN-Habitat (2009) housing plays a role in the preservation and manifestation of the identity and culture of different communities and that what is considered to be adequate housing can vary between communities. In terms of dwelling design, for instance, distinctive specifications may be necessary to allow for religious and other cultural observances such as space for use as an altar, the provision of dual sinks or larger homes for multi-generation households. Likewise, housing layouts may have to

avoid situating a toilet near the kitchen or alternatively near the front door. CESCR (1991) observations suggest that to respect cultural adequacy:

- Housing related provision should allow people to live in ways that do not disrupt their cultural identity.
- Housing related provision should be planned, constructed or modernised in a way that conserves cultural life, cultural identity and historical heritage of distinctive communities.
- Individuals and communities should have a strong voice in the planning of housing related solutions that meet their cultural and socio-economic needs.

Gypsy/Traveller community

- 3.125 The Scottish Government use the generic term Gypsy/Traveller⁴⁶ to refer to people from an ethnic group who identify themselves as European Roma, Gypsy Travellers, Romany, Scottish Travellers, and Irish Travellers. This term was agreed following extensive consultation, although not everyone from all these communities accepts this generic term. All of these different communities consider travelling and nomadic living to be part of their cultural identity. They also tend to share similar experiences of poverty, deprivation, discrimination, racism and social exclusion. This includes those that travel all year round, those who travel less frequently or only a set times of the year and those who occupy a house more or less on a permanent basis. On the other hand, these communities have different cultures, customs, languages and histories such that they can have different needs and different views about what is considered adequate housing.
- 3.126 The 2011 Census was the first to include a Gypsy/Traveller option in terms of ethnicity. This Census is often represented as providing the most comprehensive picture for Gypsy/Travellers but it is neither timely nor robust. In 2011, only 4,200 people stated they were “White: Gypsy/ Traveller”. In contrast, organisations that work with Gypsy/Travellers suggested there were 15,000-20,000 community members (EHRC, 2013).
- 3.127 Factors associated with the Census undercount include mistrust of authorities, fear of discrimination and complexities around collecting data from mobile households living on sites or by the roadside (Scottish Government, 2020g; and Craigforth-Engage, 2018). More generally, ethnicity has been shown to be an ‘attitudinal issue’ in the sense that people change their responses to the ethnicity question from one census to another depending on how questions are framed, the categories offered and the zeitgeist of the time (Simpson and Akinwale, 2004).
- 3.128 Gypsy /Travellers are typically poorly represented in national surveys and administrative data collections, such that understanding of variations between different Gypsy/Traveller communities is very poorly served by statistical data. In some policy areas, the level of such data has diminished over the past decade. This includes the Twice-Yearly Count of Gypsy/Travellers Accommodation, which was last

⁴⁶ The Equality Act 2010 affords Gypsy Travellers the same protections as all other ethnic groups, including protection from discrimination in the workplace and in wider society.

carried out in 2009. That said, the Craigforth-Engage (2018) study included material comparable to the former twice-yearly count and reported that:

- Between the 2009 and 2018 there was a slight fall in both the numbers of public sites (31 to 29) and active pitches (406 to 397). These sites are owned by 19 local authorities and one RSL.
- There were 25 private Gypsy/Traveller sites (216 pitches), three more sites than in 2009, mostly located in central and eastern Scotland.
- At least 406 discreet locations were known by local authorities to have been used for unauthorised Gypsy/Traveller encampments in the last 3 years.

- 3.129 The total of 613 public and private pitches, most of which are let on a permanent basis, falls short of the level required. There are concerns that the planning system holds back the provision of new sites and that the appeals are often required to secure planning permission. Between 2005 and 2018, just 53 planning applications for Gypsy/Travellers sites were approved, either at application or on appeal, equating to 60% of all known applications (Craigforth-Engage, 2018). There are also concerns about the quality of sites, principally those sites that have yet to meet Minimum Site Standards⁴⁷ (Scottish Government, 2020g). More positively, Gypsy/Traveller members of the SHR Tenant and Service User Panel (2020) have welcomed improvements in the quality, appearance, management and facilities of upgraded public sites.
- 3.130 Gypsy/Travellers may relocate to conventional homes for a variety of reasons, such as a lack of stopping sites, health related reasons or to be closer to services. Most people who self-identified as a Gypsy/Traveller in the 2011 Census lived in a conventional home (85%). Notwithstanding this, the Scottish Government (2020g) found that there is little evidence of any kind about the experiences of those in conventional homes. Likewise, little is known about everyday social interactions between Gypsy/Traveller communities and the wider community at local level.
- 3.131 Gypsy/Travellers encounter barriers to accessing housing and public services, which include discrimination, a lack of cultural awareness amongst service providers and eviction from unauthorised encampments. Deep-rooted health, education and income inequalities therefore persist between Gypsy/Travellers and the wider population.
- 3.132 *Housing to 2040* acknowledges the social exclusion of Gypsy Travellers and the problems they often face in accessing public services. It therefore stressed the need for continued joint working with Gypsy/Traveller groups to identify and deliver actions to improve housing outcomes. It also set out commitments to invest up to £20 million over the five years to 2025/26 to facilitate more and better-quality sites and to prepare a Design Guide for Gypsy/Traveller sites. The accompanying Equalities Statement also said that research to better understand and address the barriers faced by minority ethnic groups in accessing social housing is to be conducted, though it did not clarify if this would include Gypsy/Travellers. The statement also pointed to a need to address other evidence gaps but it did not go into detail about which other gaps the Scottish Government plan to tackle. It therefore remains to be seen if local authority

⁴⁷ Minimum site standards were introduced in 2015 and became part of the Scottish Social Housing Charter from 2016. It was expected all public owned or managed sites would be upgraded to these standards by June 2018. . .

concerns around the need for a better understanding and assessment of the housing needs of Gypsy/Travelers and other ethnic minorities will be addressed.

Other cultural groupings

3.133 The Scottish Government definition of Gypsy/Travellers does not extend to Showpeople, New Age Travellers, Boaters and Bargees. These social groups are not recognised as distinct ethnic groups but the concept of ‘cultural adequacy’ suggests that their potentially distinct housing requirements should be allowed for in national and local housing strategies. Cultural adequacy also suggests that housing strategies should be mindful of other distinct groups, that could include crofters or people from different specified religious backgrounds. For the most part, however, next to nothing is known about the current housing situation and housing needs and expectations of these different cultural groups.

Potential indicators

3.134 Cultural adequacy has proved by far the most difficult strand of adequate housing to identify possible housing outcome indicators for.

3.135 A major challenge is, as already noted, the absence of good data. For instance, we would want to routinely monitor changes in Gypsy/Traveller resident satisfaction with site provision and link this to data on improvements in the quality and management of sites. However, the Social Housing Charter only monitors satisfaction for those that occupy public sites (79% in 2019) and comparable data for those that live on privately owned sites is lacking. Furthermore, public site providers do not necessarily employ precisely the same methods for capturing satisfaction ratings. As a result, aggregated data for Scotland is less robust than desired.

3.136 Another challenge is that ‘cultural adequacy’, by its very nature, is subjective and depends on how people view their background and heritage. This reinforces the importance of engaging residents from diverse backgrounds in the design and delivery of new homes and asset management plans. On the other hand, it is less clear what benefits might be gained from efforts to establish national level housing outcome indicators, especially for non-Gypsy/Traveller cultural groups.

Gypsy/Travellers that lack adequate and culturally relevant housing

3.137 At present, it is not possible to produce a credible estimate of the numbers of Gypsy/Travellers that live in Scotland, let alone the numbers that lack adequate and culturally relevant housing.

3.138 One possible way forward might be to track trends on the numbers of caravans on unauthorised sites from one specific point in time to another. This is based on the assumption that the main reason for unauthorised encampments is the lack of sufficient authorised sites and stopping places of the right quality and/or location. This would require the instigation of a new data collection exercise, possibly modelled on the annual Count of Traveller Caravans for England and Wales.

3.139 Another option might be to work alongside Gypsy/Traveller organisations and groups to investigate the potential to capture statistically valid evidence on people that self-identify as being from one of different communities that fall within the Gypsy/Traveller grouping and that have:

- Experienced discrimination when searching for social or private housing because of being a Gypsy/Traveller in say the past 1, 3 or 5 years.
- Experienced being forced to leave accommodation or halting site in the past 12 months.

LOCATION

Key considerations

- 3.140 Housing is inherently local. The housing system and the performance of the wider economy are interlinked, but housing is consumed locally and local housing markets are shaped by many local factors aside from the performance of the local economy and labour market. The physical geography and built environment both influence what sort of housing is developed in different local areas and neighbourhoods. House prices and private rents are also linked to the social standing of an area and whether they offer easy access to better schools, healthcare services, green space and other services and amenities that influence wellbeing.
- 3.141 From a human rights perspective, location means that households should not be compelled to live in places that makes it difficult to access work, education, healthcare, public transport and other facilities or to maintain family and social networks. It also means that households should not be expected to live near sources of pollution, including air and noise pollution, which might threaten their right to health. State actions to deliver human rights, and in particular adequate housing, therefore need to understand different local area contexts, the diversity of local needs and what people value about their local area and how well they think it serves them.
- 3.142 Place shaping and the regeneration of comparatively disadvantaged urban and rural communities have been policy priorities in Scotland for several decades. This has continued in *Housing to 2040*. To deliver “stronger and more vibrant places” the Scottish Government has said it wants to redevelop vacant and derelict land, repurpose existing properties, especially those lying empty, and strengthen community engagement in the process. It has also promoted ‘20-minute neighbourhoods’ and the idea that homes should be situated in ‘resilient and sustainable’ areas that allow residents to access places and services they use daily without having to rely on a car.
- 3.143 Various approaches have been used in the past to deliver and monitor neighbourhood renewal and community regeneration programmes across Scotland, some more useful than others. One important lesson has been that place shaping and regeneration activity requires concerted action that address multiple issues such as deprivation, environmental quality, skills development, access to green space and so on. Another has been that approaches are more useful if applied and owned locally rather than imposed nationally in a top-down, uniform and rigid manner.

Possible indicators

- 3.144 The National Performance Framework has an outcome indicator for “the percentage of people rating their neighbourhood as a very good place to live”. Between 2006 and 2019 the percentage of people who rated their neighbourhood positively increased

from 51% to 57%. This indicator also forms part of the Scottish Government's Housing and Regeneration Framework, which contains 10 sustainable community indicators, covering economic, physical and social sustainability. None of these indicators are well suited to the current task in hand. This is because none have been specifically designed to measure the actual number of households where the 'quality' of their local area, in terms of access to local amenities and/or the quality of the local environmental pollution prevents them from fully realising their right to adequate housing⁴⁸.

- 3.145 The Scottish Index of Deprivation (SIMD) is a useful tool and has gone a long way to capturing many of the most important economic, social and physical features of small areas. However, the design of the SIMD and the statistical methods used to construct SIMD mean that it is not a suitable tool for quantifying changes in the numbers of households that are subject to multiple deprivation.
- 3.146 On the other hand, one component of the SIMD tool is the geographic access domain. This indicator is based on modelling the ability of Scottish residents to reach a number of key services within a specified timescale either by walking, public transport or private car. Although further investigation would be required, this accessibility model holds out some possibility that it might be possible to produce a reasonable proxy for the numbers of households that live in neighbourhoods that provide adequate access to services.

CONCLUDING REMARKS

- 3.147 Table 3.7 summarises the 29 indicators of adequate housing that have been considered in this chapter segmented by seven CDESCR conditions of 'adequate housing' conditions. Overall:
- 12 potential indicators can be measured, albeit not always precisely. Several of these indicators would very clearly benefit from further development to improve the robustness of the figures reported. In the meantime, these are the indicators employed in chapter 4.
 - 14 potential indicators cannot be currently quantified and would require adjustments to existing data collections or new arrangements to permit these indicators to be measured.
 - 3 potential indicators have been dropped as they either do not focus on outcomes or would result in extensive double counting.

⁴⁸ Some indicators measure social capital (e.g., feeling safer walking alone at night or feel can influence decision affecting their local area). Some measure aggregate characteristics for the household population (e.g., workless households) and some look at the 'gap' between deprived areas and other areas in terms of healthy life expectancy and educational attainment.

Table 3.7: Summary of findings for each of the potential housing outcome indicators 2019-20

Condition	No	Possible indicator	Indicative
Tenure security (including homeless)	1	Households threatened with, or experience, homelessness as a result of mortgage related repossessions	Not currently possible
	2	Households evicted from the social rented sector	Not currently possible
	3	Households evicted from the private rented sector	Not currently possible
	4	Households evicted from the rented or owner occupied home unable to secure suitable alternative accommodation.	Not currently possible
	5	Households in private rented sector without adequate security of tenure.	Not currently possible
	6	Households that contain adults that lack tenure security within the home	Not currently possible
	7	Average number of households that sleep rough on a given night	700
	8	Households in emergency and/or temporary accommodation at end of financial year	11,665
	9	Households that are 'homeless at home (other 'live' statutory homeless households)	8,880
	10	Concealed families that want or require a home of their own	24,000
	11	Households (benefit units) compelled to share accommodation and are exposed to potentially dangerous situations	Not currently possible
	12	Potential households unable to secure a home of their own	Dropped
	13	Households with multiple and complex needs (only if not included in other homeless indicators)	Dropped
	14	Irregular migrants and others without recourse to public funds that lack tenure security	Not currently possible
Housing affordability	15	Households required to spend more than 25% of income on housing costs	363,000
	16	Households with AHC residual income below appropriate minimum income standards	Not currently possible*
	17	Households that experience housing cost induced poverty	Dropped
Habitable homes with adequate services and facilities	18	Households that occupy a BTS dwelling	40,000
	19	Households living in energy inefficient homes (housing quality driver of fuel poverty)	1,337,000 (361,000)
	20	Households lacking a dry home (e.g., dampness and condensation)	Not currently possible
	21	Households that live in homes that are not free from major critical disrepair	25,000
	22	Households whose home fails the SHQS Healthy, Safe and Secure component	130,000
Accessible housing, (physically or socially trapped)	23	Households that live in overcrowded conditions (bedroom standard)	51,000
	24	Households with unmet need for adaptations to their home	50,000
	25	'Vulnerable' households (that contain a person with a limiting health condition or disability) that do not occupy a home that meets basic accessibility standards	Not currently possible
	26	People with disability or health condition trapped in hospitals or care homes (i.e., awaiting adaptations or because of lack of housing options)	600
	27	Households trapped in inappropriate housing due to domestic abuse	Not currently possible
Cultural adequacy	28	Households that self-identify as Gypsy/Travellers that lack adequate and culturally relevant housing	Not currently possible
Location	29	Households that live in local area that cannot access work and key services within reasonably short distance	Not currently possible

* This indicator has been used to cross-check the validity of the affordability ratio measure (see chapter 4)

4 BRINGING THE INDICATORS TOGETHER

HOUSEHOLDS THAT FALL SHORT OF BEING ADEQUATELY HOUSED

- 4.1 The first half of this chapter brings together the 12 outcome indicators that can be measured to estimate the total numbers of households whose living conditions may fall short of their right to adequate housing. These estimates provide an insight into the scale and range of the challenge ahead but they are intended for illustrative purposes only. The use of a different combination of outcome indicators or different data sources would generate different estimates.
- 4.2 The illustrative figures draw on Scottish Household Survey 2018 micro-data. In January 2021, these was the latest data available from the UK Data Archive. This was supplemented with stock quality and other variables supplied by the Scottish Government, resulting in a sample of up to 2,962 paired household and physical surveys. Estimates from these micro-data do not correspond with those reported in chapter 3, as the latter refer to 2019 SHS findings. The differences are generally modest and not always statistically significant. For instance, the rate of overcrowding for both years was 2% but the estimated household count fell from 53,000 in 2018 to 51,000 in 2019.

Further consideration of housing affordability

- 4.3 As noted in chapter 3, the two most common ways of measuring housing affordability are affordability ratios and residual income-based approaches. Our central estimate assumes housing costs should equate to no more than 25% of net income. This benchmark was set only after work to crosscheck outputs against a MIS-based residual measure of affordability and other validation checks were completed.
- 4.4 The full set of variables required to assign the most appropriate 2018 MIS cash sum to each of the 2,962 households records were not contained in the SHS micro-data to preserve confidentiality. As a result, a ‘best fit’ approach was adopted. Essentially, the applicable MIS rate was added to each record containing a single person or other type of household that could be readily identified. For family or lone parent households, the lowest applicable MIS for a given number of children were applied. Hence, the MIS assigned to households with teenagers will be lower than would otherwise be the case. The remaining cases were then screened to assess if a plausible MIS could be applied. Overall, an indicative MIS was applied to around 90% of cases.
- 4.5 Residuals income for all valid cases⁴⁹ were calculated by subtracting self-reported rent costs, mortgage costs and council tax payments. The latter payments were included to be consistent with MIS values and to allow for the fact that the Scottish Government advice (2019d) that:

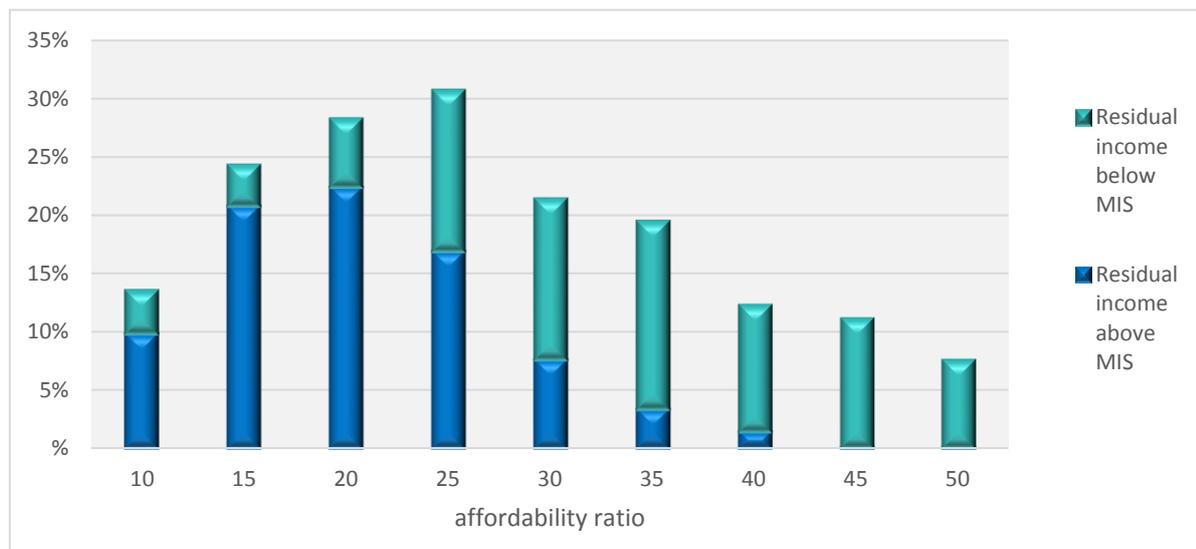
“Where a respondent provides a council tax value net of any discounts or reductions, any contribution to income from (CTR) is removed from their household income total, as this will be reflected in the partial council tax value reported. If the respondent provides a full council tax value, any

⁴⁹ Over 300 cases were classed invalid because either income or housing costs data was missing or because the reported housing cost or income values were outliers. These cases were removed from the affordability analysis but retained for the other indicators.

declared CTR is left incorporated in the overall household income total” (p16).

4.6 Figure 4.1 summaries the percentage of cases that have an affordability ratio of between 10% and 55% and the proportion of those cases with a residual income that is above or below the applicable MIS. The figures exclude outright owners. It shows that there is a marked increase in the proportion of cases with a residual income below their applicable MIS once households spend 25% or more of their net income on housing costs.

Figure 4:1: Percent of non-outright owner households - affordability ratio by AHC income above or below MIS



Source: SHS/SHCS micro data, unweighted for all 1,570 valid cases other than outright owners

4.7 Looking at the weighted data for households, including outright owners, it appears that in 2018:

- Around 538,000 households spent 25% or more of their net income on housing costs, of which over half appear to have a residual income below their applicable MIS.
- Around 356,000 households spent 30% or more of their net income on housing costs, of which over three quarters have a residual income below their applicable MIS.

4.8 The 25% threshold was adopted for a mix of conceptual and technical reasons. The concept of housing affordability, whatever else it means, is not a measure of poverty or financial hardship. As housing policies to assist first time buyers attest, affordability implies that households should have a degree of choice over where they live. This suggests affordability ratios should be set below the level at which households, and in particular households not reliant on ‘means tested’ state benefit, are financially stretched to the point of being at significant risk of incurring problems paying for housing and/or other daily essentials.

4.9 The SHS estimate that 356,000 households spend 30% or more on their net income on housing costs is similar to the FRS estimate of 363,000 reported in chapter 3.

However, the SHS estimate is understood to be an undercount. This is due to differences in the definition of housing costs as well as differences in the definition and quality of incomes between the two surveys.

- 4.10 The SHS treats mortgage capital repayments as a housing cost whereas the FRS treats such costs as savings. This implies that SHS estimates should exceed FRS estimates due to the greater numbers of homeowners likely to be identified as spending 30% or more of their income on housing costs. However, if homeowners are discounted, the SHS count would fall to 262,000 whereas the FRS count would fall to 334,000⁵⁰.
- 4.11 FRS income estimates refer to the incomes of all household members whereas SHS 2018 income estimates refer to the income of the housing reference person and, if applicable, their partner. The FRS, unlike the SHS, also includes income from investments and some other less common sources. These two differences effectively 'boost' FRS household income estimates relative to the SHS. The SHS also undercounts income from social security payments, including state pensions and disability benefits. As a result, households that rely on benefits as their main income source are more likely than other households to have been excluded from our SHS-based analysis of affordability.
- 4.12 The Scottish Government has an ongoing programme to improve the SHS income data that will bring them into closer alignment with the FRS definition of household income. Part of this programme will involve the imputation of missing social security payments (Scottish Government, 2020g). This should improve the read across between the two surveys by the end of this year, although the FRS will remain the preferred source for analysing household income and poverty.

ILLUSTRATIVE ESTIMATES AND VARIANTS

- 4.13 The central estimate of the numbers of households whose living conditions may fall short of adequate housing is based on a composite measure that combines all 12 measurable outcome indicators. The figures for the five indicators that relate to 'security of tenure' and 'people trapped in institutional care' are those reported in chapter 4. The remaining seven indicators are based on SHCS 2018 microdata, which makes it possible to eliminate double counting across these indicators.
- 4.14 The central estimate is consistent with Scottish Government plans to require all homes in all tenures to attain EPC Band C by 2035 or earlier. The ambitiousness of this can be seen by the fact that up to half of all households in Scotland live in homes that fall short of this one measure. In chapter 3 it was noted that as SHCS surveyors cannot always identify the presence of cavity wall insulation, the EPC Band for some dwellings is under-estimated. A variant restricting the energy inefficiency measure to EPC Band E-G was therefore produced. Two further variants to illustrate the impact of raising the affordability ratio threshold to 30% were also produced.

⁵⁰ The SHS and FRS respectively suggest homeowners account for 26% and 8% of those spending 30+% of their net income on housing costs.

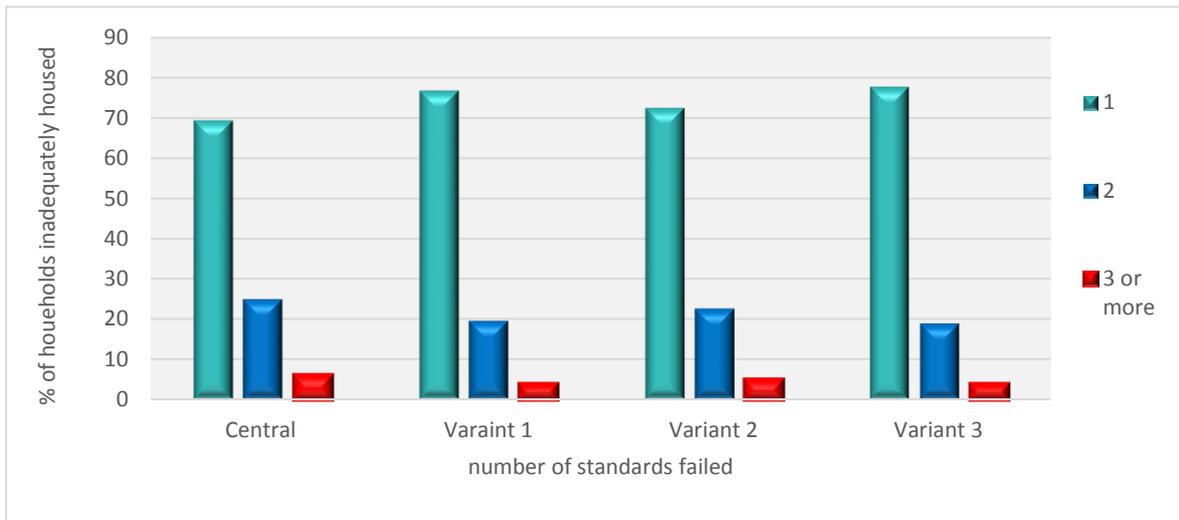
- 4.15 The central estimate and the three variant estimates are summarised in Table 4.1. It underlines how sensitive the overall estimate is to how the variables are defined and shows that:
- The living conditions of 1,832,000 households (74%) fall short of the standards implied by the right to adequate housing. This number would fall to 1,154,000 households (47%) if energy inefficiency was limited to homes with an EPC Band of E-G.
 - Households counted as inadequately housed would fall to 1,021,000 if energy inefficiency indicator was set at EPC Band E-G and the affordability ratio thresholds was set at 30%.
 - Even using the most stringent indicator definitions, the living conditions of 41% of households and 37% of Scotland’s population would appear to be at risk of falling short of adequate housing standards.
- 4.16 It is important to stress, however, that if Scottish Government priorities in respect of improving energy efficiency standards in all tenures progress as planned, these numbers should fall very considerably over the decade ahead.

Table 4.1: Core and variant estimates of households and people that fall short of adequate housing

	Households		Population	
	Number	Percent	Number	Percent
Central estimate of adequate housing	1,832,000	74	3,771,000	69
Variant 1: EPC Band E and below	1,154,000	47	2,271,000	42
Variant 2: 30% affordability ratio	1,750,000	71	3,608,000	66
Variant 3: EPC Band E and 30% affordability ratio	1,021,000	41	2,014,000	37
Total households /population (2018)	2,477,000	100	5,438,000	100
All figures rounded to the nearest 1,000				
Note: Total Households based on SHCS 2018 and total population based on NRS 2018 population estimates				

- 4.17 Using the SHCS microdata, it is possible to gain some insight as to how many households that currently have their own home may be inadequately housed for two or more reasons. As Figure 4.2 illustrates, in all four versions of the headline count, most households fail on a single criterion.

Figure 4.2: Percent of households with their own home that are inadequately housed by number of criteria failed



Note: Figures exclude those who are homeless or live in an institution

- 4.18 Setting aside households that lack security of tenure, the central estimate suggests that:
- Some 1,239,000 households fail on a single criterion. This equates to 50% of all households in Scotland and 69% of households that fall short of being adequately housed.
 - Some 547,000 households fall short of being adequately housed for two or more reasons, which equates to 22% of all households and 31% of households that are not adequately housed.
- 4.19 If it is assumed that homeless households and others that lack tenure security fail on just a single criterion (which seems very unlikely), then the figure of 1,239,000 households would increase to 1,284,500. This would equate to around 52% of all households in Scotland. This confirms that whilst homelessness is the most visible signal of the State’s failure to ensure adequate housing for all, it is only one, relatively small manifestation of current shortcomings in respect of the full realisation of adequate housing in Scotland.
- 4.20 For variant 3, the number of households with their own home that appear to fall short of being adequately housed for two or more reasons falls to 218,000 households. This equates to 9% of all households and 23% of households that fall short of being adequately housed.

Characteristics of households that are not adequately housed

- 4.21 The SHCS microdata suggest that the profile of households that fall short of being adequately housed according to the central estimate⁵¹ is similar to the profile of all households in Scotland (see Table 4.2).

⁵¹ The profile of households that lack adequate housing according to the three alternative variants appear to be broadly similar.

4.22 The lack of data available to support triangulation makes it hard to draw firm conclusions but it appears that the only differences of any significance are that:

- Single person households are at greater risk of living in non-adequate housing than other households. Some 80% of single persons under the age of 65 years are not adequately housed compared to 74% of all households included in the SHCS micro dataset.
- The proportion of private renters that live in homes that fall short of being adequate is higher than for all other tenures. Overall, 84% of all private renters live in non-adequate housing.
- Couples where both partners are in work are significantly less likely to occupy inadequate housing than households where only one person is in work or no-one is in work.
- Those living in rural areas are at greater risk of residing in non-adequate housing. Around 86% of all households that live in rural areas fall short of being adequately housed compared to 70% of households that live in urban areas.

Table 4.2: Profile of households who ‘pass’ or ‘fail’ the adequate housing standard according to the central estimate (%)

		RAH failed (%)	RAH pass (%)	All households (%)
Tenure	Owned outright	34	36	34
	Buying with loan/mortgage	27	32	28
	Social rent	27	26	26
	Rent - private landlord	14	6	11
Urban - rural (2016)	Urban	82	92	85
	Rural	18	8	15
Ethnic origin of householder	White	97	97	97
	Minority ethnic groups	3	3	3
	Don't know	0	0	0
Long term poor health or disability	Long term health condition or disability	45	39	44
	No self-reported health problems	55	61	56
Household working status	Single working adult	19	12	18
	Non-working single	29	27	28
	Working couple	25	35	28
	Couple, one works	9	11	11
	Couple, neither work	16	15	16
Household type	Single adult	22	17	20
	Small adult	19	19	19
	Single parent	5	5	5
	Small family	12	15	13
	Large family	4	6	5
	Large adult	7	8	7
	Older smaller	16	15	16
	Single pensioner	17	15	16
Total		100	100	100

- 4.23 Drilling down to look at the 547,000 households who are inadequately housed for two or more reasons, it appears that households that are most at risk of being inadequately housed are also the more likely to fail to attain their right to adequate housing for two or more reasons. Thus:
- Around 31% of all households that are inadequately housed ‘fail’ for two or more reasons but for private renters the comparable proportion is 48%.
 - Of the 370,000 single adult households under the age of 65 years that are inadequately housed, over 40% ‘fail’ for two or more reasons.
- 4.24 Our central estimate suggests that problems with affordability and energy inefficiency are experienced in parallel by some 275,000 households (11%), of which over half are owners (34%) or privately renters (25%). This may have implications for the design and delivery of policy to upgrade the thermal efficiency of private sector homes and may warrant further investigation by the Scottish Government once improved SHS income data have become available.

OVERARCHING ISSUES: DATA GAPS AND SUBJECTIVE MEASURES

- 4.25 A central objective of this study was to consider data-related issues that hinder full scrutiny and accountability in respect of the ‘right to adequate housing’. Chapter 3 highlighted there are substantive gaps in available data, especially in respect of producing headline indicators for security of tenure, accessibility and cultural adequacy. However, both the UN human rights agenda and the Scottish Government pledge to ‘leave no one behind’ also mean that it is important for data collection to be capable of:
- Capturing disparities in outcomes between different social groups, including those with different ‘protected characteristics’ and other vulnerable and disadvantaged households.
 - Supporting analysis of households that face multiple (or intersecting) inequalities, such as race and/or disability.

Limited data for the non-private household population

- 4.26 Many of the outcome indicators that we have identified can only be estimated by drawing on household survey data and specifically the SHS. This is also the case for the National Performance Framework and the Housing and Regeneration Outcomes Framework.
- 4.27 Unlike the Census, national surveys tend to omit people whose residence is not a private household. This includes individuals that live in communal settings and other assorted establishments⁵², as well as those who live a nomadic life. For instance, the SHS omits individuals and households that live in a caravan, mobile home or B&B, unless the unit is their sole or main residence and is listed on the Small User File of the Postal Address File (PAF). The SHCS physical survey also excludes all dwellings without foundations (such as mobile homes etc.). These long-standing omissions reflect the difficulties of securing a statistically representative sample for the non-

⁵² Communal establishments include health and social care facilities, educational establishments, hotels, prisons, etc.

private household population and the challenges of interviewing nomadic populations and people with more complex needs.

- 4.28 The number of individuals that fall outside the private household population is modest. However, they include some of the most vulnerable members of society, too many of whom appear to be routinely denied their right to adequate housing. For instance, a Scottish Government (2018b) review of people with learning disabilities placed in care settings found that at least 126 out of 784 individuals were in inappropriate ‘out-of-area’ placements. The review also found that at the start of 2017, some 67 individuals had experienced a delay in being discharged from hospital. In both instances, a lack of suitable accommodation and a lack of skilled service providers were identified as the main barriers to repatriation.
- 4.29 Individuals may also enter institutions due to a lack of suitable alternatives. In the decade to 2019-20, the proportion of people arriving in prison with ‘no fixed abode’ almost doubled to 7.5%. Research suggests this will include people who have re-offended in order to return to the ‘security’ of prison accommodation (Loucks, 2007).
- 4.30 The main alternative to survey data is administrative data sources. The Scottish Government’s homeless statistics collection is a good example of administrative data that can potentially be used to estimate changes in the annual numbers of the non-private household population denied their housing rights in the period between each Census. Other examples include Public Health Scotland (formerly ISD) data on people living in health and care establishments, Prison Service data on people in prison, and Higher Education Statistics Agency data on students who live in educational and private halls of residence during term time.
- 4.31 The problem is that, other than homeless data, these administrative data sources provide few insights into the numbers of individuals that enter or continue to reside in communal settings, either indefinitely or longer than necessary, due primarily to a lack of access to suitable housing. This holds back the ability to comprehensively monitor and evaluate progress towards the full realisation of the right to adequate housing.

Variations between different social groups

Census

- 4.32 The 10-yearly Census provides the most comprehensive count of all individuals and households, including the non-private household population, although a small amount of undercounting persists⁵³. Most questions are repeated from one Census to the next, which can provide insights into changes over time. This includes changes in the composition of the population in respect of most of nine characteristics protected by the Equality Act 2010. These are age, sex, disability, race, religion (belief), sexual orientation, gender identity, marriage or civil partnership, and (for work only) pregnancy and maternity.
- 4.33 The next Census in Scotland will be conducted predominantly online in 2022. Minor revisions are planned in respect of sex, gender identity, ethnicity and religious questions and coding structure. For instance, the ‘White’ category will allow people to self-identify as ‘Gypsy/Traveller’, ‘Roma’ or ‘Showman/Showwoman’. At the time of

⁵³ The law requires all UK residents to complete a return but undercounting can occur (forms not returned or a failure to answer questions).

writing, the NRS were also revisiting plans to favour self-defined gender. This follows ONS acceptance of a court ruling that in the case of the English and Welsh Census 2021, the binary sex question must be completed according to sex as stated on birth certificates or gender recognition certificates.

4.34 Irrespective of the outcome of the NRS review, the Census 2022 will make minimal difference in our understanding of the adequacy of the housing circumstances of people with protected characteristics. The Census 2022 will continue to gather basic information on household composition and dwelling characteristics but additional topic proposals in relation to income, housing quality, energy efficiency, and household mobility were all discounted⁵⁴. The inclusion of a question of ‘the number of bedrooms’ should improve measurement of overcrowding and how rates vary between social groups. On the other hand, the tenure question will remain less detailed than elsewhere in the UK⁵⁵.

Non-census data and protected characteristics

4.35 Scottish Government analysts have made efforts to improve data collected in relation to protected characteristics. The Scottish Surveys Core Questions (SSCQ) combines data on 20 harmonised questions from three national surveys. Since 2012, the SSCQ has expanded the range of protected characteristics it covers to include sexual orientation and gender identity. However, sensitivities around data protection and confidentiality mean that published data for less prevalent protected characteristics, such as race, disability, gender identity and sexual orientation, have to be collapsed into broad groupings⁵⁶. As Table 4.3 illustrates, this results in a loss in specificity.

Table 4.3: Tenure status by ethnic profile of adults living in Scotland, 2019

	All	Owned outright	Mortgaged	Social rented	Private rented
White: Scottish	75.9	80.5	76.6	81.2	56.0
White: Other British	12.5	15.3	12.5	6.8	14.1
White: Polish	1.9	0.1	2.2	3.4	3.0
White: Other*	4.9	2.2	4.1	2.6	16.8
Asian**	2.9	1.5	3.0	2.3	6.4
All other ethnic groups***	1.8	0.4	1.4	3.6	3.4
ALL	100.0	100.0	100.0	100.0	100.0
all adults	4,540,000	1,490,000	1,465,000	930,000	635,000
Sample size	20,200	7,700	5,700	4,400	2,400

Source: Scottish Government (2021) SSCQ 2019 indicators
Notes: Reported figures do not precisely sum to 100% due to rounding.
* 'White: Other' includes 'White: Irish', 'White: Gypsy/Traveller' and 'White: Other White Ethnic Group'
** 'Asian' includes the categories Asian, Asian Scottish or Asian British
*** 'All other ethnic groups' includes categories within the 'Mixed or Multiple Ethnic Group', 'African', 'Caribbean or Black', and 'Other Ethnic Group' sections.

⁵⁴ Most housing topics were discounted due to “insufficient user need” whilst the income question was dropped after pilot testing confirmed major problems getting people to divulge incomes and earnings. When compared to the Family Resources Survey, under reporting of annual household income recorded by the pilot ranged from £15,600 and £36,399, with the problem most acute for households with two or more adults.

⁵⁵ In Scotland the tenure question combines Local Authority and RSL into the same category. There is also no category for people that rent from an employer or people who rent from a relative. This will prevent identification of the share of PRS letting not covered by landlord registration.

⁵⁶ This is vital; in 2019 the “white other” included just 10 Gypsy/Travellers and 170 Irish.

- 4.36 Aside from grouping together different categories, another technical way to try and improve reporting is to combine data from two or more years. However, this is only possible if there are no significant changes in the wording of questions. In addition, as noted already in respect of overcrowding, it can disguise important changes during those years.
- 4.37 Another limitation of the SSCQ dataset in terms of monitoring the right to adequate housing is that the only housing variable included is tenure. From a housing perspective, the SHS is the most important national survey used to compile the SSCQ. At present, most SHS and SHCS tabular outputs are not segmented by protected characteristics, though in the case of the less prevalent protected characteristics, these data would have to be suppressed for confidentiality reasons.
- 4.38 Elsewhere, the full set of protected characteristics are not routinely included in administrative data collections. In 2021 the Scottish Government commissioned a review of 55 Scottish datasets from across a range of policy areas. The review included homeless application and housing option returns. This study found that just 15 data collections covered seven or more of the nine protected characteristics. It also confirmed there was little standardisation in the way the variables were defined or the way the data were processed, analysed and reported (Waterton et al, 2021).
- 4.39 The upshot is that 'hard' data on how housing outcomes vary across different social groups, and in particular the housing outcomes of groups with 'protected characteristics' such as race, disability, sexual orientation and self-identified gender identity, are lacking.
- 4.40 It may be prohibitively expensive to conduct the extensive screening exercises and over-sampling techniques that would be required to boost the SHS sample to support meaningful statistical analysis for a broad range of social groups. Even if this was achievable, it would add further complexity to the SHS. Nor would the representativeness of an enlarged sample necessarily be guaranteed. As the 2011 Census count for Gypsy/Travellers showed, people may not be willing to identify themselves as belonging to a specific group in a social survey.
- 4.41 One way forward may be for the Scottish Government to sponsor purposive surveys, but this would require careful consideration. Such surveys can produce a rich stream of knowledge but they do not typically produce data from which valid statistical inferences can be drawn. For instance, surveys of LGBT adults tend to over sample people who are white, under 40 years and live in certain urban areas; and under sample individuals that are older, from ethnic minorities, live in rural areas and do not engage with LGBT groups or participate in LGBT events (Aspinall, 2017).
- 4.42 Another option may be to link data across multiple data collections. Work to link homeless and health data is underway across Britain. The Urban Big Data Centre also has a data linkage study to improve understanding of private renting in Scotland. These developments illustrate the potential for data linkage to enhance the monitoring of progress towards adequate housing. However, data linking is an onerous and resource intensive process and requires a range of data governance, ethical, data quality and other technical issues to be resolved. Data linkage alone would also not produce harmonised data for different social groups. As the Waterton study (2021) has observed, mainstreaming equality is a complex undertaking and will require

Scottish Government leadership to ensure more comprehensive and consistent data are routinely collected by public bodies.

A word on subjective indicators

- 4.43 Housing policy is not just concerned with material matters such as the supply and quality of homes. Hence, the inclusion of subjective indicators to track people's perceptions of their home and their experience of the housing system to complement objective indicators would be valuable.
- 4.44 One advantage is that it would permit comparisons between the two sets of indicators. Similar findings would help to validate objective indicators whereas mismatches would suggest objective indicators might warrant further investigation to see if they are sufficiently context specific. For instance, differences between objective and subjective overcrowding indicators might indicate that the 'bedroom standard' no longer aligns very well with what the wider public consider to be adequate living space.
- 4.45 Another possible advantage is that subjective measures could provide data for issues that are technically challenging to measure objectively. This might include household perceptions about problems with dampness and condensation, indoor noise problems, external pollution and other issues that the SHCS physical survey would struggle to reliably measure.
- 4.46 Subjective indicators would also provide an opportunity to capture people's views and experiences in a way that respects cultural differences. For example, surveys could take cognisance of how racism and harassment have shaped the housing experiences and outcomes of people from minority ethnic groups and at the same time how this experience differs by ethnic identity, age, class, whether born in the UK, and so on.
- 4.47 The SHS is not only an official source of statistics on stock condition, energy efficiency and fuel poverty, it is also a vital source of data about people's perceptions about their home and surrounds. It collects respondent perceptions about the size of their home, difficulties heating their home, difficulties getting about the home, and satisfaction with their home and neighbourhood. In addition to the limited ability to report findings for less prevalent social groups, the main drawbacks of the SHS are that:
- Tabular outputs do not routinely report on all of these variables, although the SHS team are approachable and responsive to ad-hoc requests.
 - Some potentially important issues, such as perceptions of dampness, are only asked of those that state they are dissatisfied with their home.
- 4.48 As a lengthy and multi-policy survey, the SHS is constrained in terms of the space it can devote to housing issues. If greater use of subjective indicators was seen to be beneficial and these data were not already included in the SHS social survey schedule, other options would have to be explored.
- 4.49 One option might be to re-survey SHS respondents who have given permission to be re-contacted for future research. Another option might be to explore the use of UK-wide surveys. For instance, the housing modules for the 'Understanding Society

Survey' are similar to the SHS but questions on dampness, condensation and other quality issues are asked of all participants. It also contains insightful questions on problems paying for housing. A further option may be to explore the scope to make better use of the modular format of the SHS. For example, a core housing module carried out every year might be complemented by two or three supplementary modules that could be rotated and carried out every two to three years.

5. CONCLUDING OBSERVATIONS

KEY FINDINGS

- 5.1 The Human Rights Bill will require policy makers and housing providers to think carefully about how they can maximise their contribution to empowering people to fulfil their right to adequate housing and simultaneously adhere to the human rights principles of non-discrimination, participation, transparency and accountability.
- 5.2 The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has set out seven conditions that must be attained for the full realisation of the right to adequate housing. These are security of tenure, habitability, availability of services, affordability, accessibility, cultural adequacy and location. The seven conditions have been defined in a very general way so that States can set out what adequate housing means in concrete terms in a way that is sensitive to the local context.
- 5.3 The main focus of this discussion paper therefore has been to explore what outcome indicators might communicate what the full realisation of the right to adequate housing would look like in a Scottish context and whether it might be possible to quantify these indicators on a routine basis⁵⁷.
- 5.4 Of the 29 indicators initially suggested, 26 were identified as being suitable housing outcome indicators. This was on the basis that they were clearly linked to one of the CESCR conditions, were consistent with Scottish housing policy ambitions, were accessible to non-experts, and had the potential to be populated with regularly updated data.
- 5.5 As stressed at different points throughout this paper, these 26 housing outcome indicators are not necessarily the most appropriate indicators. Resource and data constraints meant our focus was confined to indicators that describe people's living conditions rather than indicators that capture how people perceive and experience their living conditions. Nor is it implied that these, or any other housing outcome indicators, could take the place of other evidence, such as performance data and human judgement and experience, in drawing conclusions about Scotland's progress towards enabling everyone to fully realise their right to adequate housing.
- 5.6 Overall, 14 out of the 26 indicators would require further refinement and data development before they could be deployed. Some of the 12 indicators that we could populate with data would also benefit from further work to ensure they are 'fit for purpose'. This includes indicators on housing affordability, people sleeping rough and disabled people lacking adaptations.
- 5.7 The 12 housing outcome indicators collectively suggest that anywhere from 41% to 74% of households in Scotland fall short of realising their right to adequate housing. This equates to between 1.02 million and 1.83 million households. This wide variation highlights how sensitive the findings are to what indicators are adopted and how these indicators are defined. The majority of households fall short of adequate housing for

⁵⁷ The CESCR also recommends that States should set and minimum core standards that public bodies and, where applicable, other organisations should be obliged to meet immediately, as part of its efforts to progressively realise adequate housing and other economic, social and cultural rights. However, this has not been the focus of this paper

just one reason, most commonly because their home is not sufficiently energy efficient.

- 5.8 Our central estimate also suggests that a minimum of 48,500 households are homeless and lack a secure home of their own; and around 547,000 households have a secure home but are inadequately housed for two or more reasons. This latter figure equates to over 1 out of every 5 households in Scotland. Amongst households that have a home of their own, single persons of working age and private renters appear to be most at risk of being inadequately housed, whereas households with two people in work are at least risk. These figures suggest that the extensive policy efforts being made to eliminate homelessness in Scotland, which is an OHCHR 'minimum core obligation', should be accompanied by equal policy effort to assist other households that experience more severe forms of housing deprivation, not least to prevent homelessness occurring in the first place.
- 5.9 More generally, the various estimates indicate that housing policy will have to reach large numbers of households to progressively realise adequate housing. This is a salutary reminder that implementation of a human right policy framework will be a far more complex and challenging task than simply taking the first step to enact human rights legislation that embodies economic, social and cultural rights. It also reinforces the fact that although human rights and equalities are inter-related, human rights enshrine socially and legally guaranteed entitlements for everyone and not just individuals with protected characteristics.
- 5.10 Of more immediate relevance than the illustrative headline estimates are what this review has revealed about data limitations for Scotland as a whole. Looking across the seven CESCR strands of adequate housing:
- There are good data on statutory homeless but there are gaps in relation to other dimensions of security of tenure. These include data on the housing outcomes of people following eviction and people compelled to share accommodation, especially those exposed to possibly threatening or dangerous situations. We also know nothing, statistically speaking, about the living conditions of what the EU term irregular migrants.
 - There are good data in relation to habitability and the provision of services at national level, although there are issues around the measurement of dampness, condensation and energy efficiency.
 - There are reasonably good data to monitor affordability. The bigger issue is that there is no consensus as to how affordability should be defined and what should be counted as housing costs and income. The FRS is the preferred data source but it contains few housing variables. This limits the ability to explore how affordability intersects with other aspects of adequate housing. Ongoing work to improve SHS income data should enhance confidence in the use of SHS data to monitor affordability, assuming triangulation confirms they correspond well to the FRS.
 - Data on the accessibility of housing, other than for overcrowding, are lacking. Data on people with a disability and how suitable their current home is, or the housing stock in general, to meet their needs are poor, as are data on people trapped in institutions due to a lack of access to suitable housing. Evidence on the

housing situation of people that experience domestic abuse is also currently limited to data from statutory homeless returns.

- There is an absence of data to develop any indicators for cultural adequacy. The Census 2022 may provide more reliable evidence than its predecessor on the numbers and living conditions of Gypsy/Travellers, but there remains a paucity of data to monitor housing outcomes in the intervening period. This is also the case for other cultural groups.
 - Data on the 'quality' of locations in terms of the availability of amenities and exposure to pollution, including indoor and external noise pollution, appear to be lacking. However, as this strand was not part of the study brief, it has been less extensively explored.
- 5.11 From a human rights perspective it is important to understand whether or not different social groups are more likely than the population at large to fall short of realising the right to adequate housing. This includes disadvantaged groups and individuals with protected characteristics according to equalities legislation. The minimal representation of people from less prevalent social groups in national surveys and administrative data collections is problematic and risks policies further disadvantaging some of the more vulnerable members of society. Of particular concern should be the lack of data to monitor the extent to which people with different disabilities fall short of minimum core standards of adequate housing, which the CRPD has confirmed that States have an immediate obligation to address.
- 5.12 At different points in the paper, options that might address some of the data gaps identified have been made, including the potential to develop and incorporate subjective indicators. The report has also highlighted instances where data are already collected but not routinely published, which hampers public scrutiny.
- 5.13 This includes the limited availability of published statistics on the tenure and characteristics of households that occupy homes in poor condition, including dwellings that show signs of dampness and/or condensation. This is indicative of the fact that the SHCS key report (and accompanying tables) has more or less evolved into an energy efficiency and fuel poverty report. Thus, discussion of disrepair, dampness and condensation, the Tolerable Standard, the SHQS and overcrowding, are all confined to chapter 6 at the end of the report. This is consistent with Scottish Government policy concerns, but it is not satisfactory from the viewpoint of understanding progress towards adequate housing.
- 5.14 The incorporation of subjective indicators and deeper analysis of the SHS/SHCS and other national surveys might address some data gaps. However, there are no quick fixes for other substantive data gaps identified in this paper. Experiments to link different data sources may help to address some of these, but this will only deliver results in the longer term if sufficient resources are made available to support the onerous work such experiments entail.
- 5.15 Overall, data limitations mean that we have an incomplete picture of the numbers of individuals and households that fall short of realising their right to adequate housing. This has added to the difficulties in documenting how the COVID-19 pandemic has reinforced or magnified housing problems for different social groups in spite of the unprecedented steps taken by the UK and Scottish governments.

MOVING FORWARD

- 5.16 If the Scottish Government is serious about placing human rights at the heart of policy and budgetary decisions, then it will be essential to invest in housing data. In particular, it will have to ensure its analytical services have sufficient resources and capacity to collect, analyse and publish robust and timely data to:
- Support progressively more comprehensive routine monitoring of progress towards the right to adequate housing as well periodic independent systematic assessments of progress, as recommended by the UN Special Rapporteur for Housing.
 - Inform the budgeting process and to assess the degree to which resource allocations are consistent with reducing the numbers of people who fall short of adequate housing and closing the gaps in adequate housing experienced by different social groups.
 - Enhance human rights and equality impact assessments of policies and programmes, including the risk of discriminatory outcomes.
- 5.17 The Taskforce stressed the importance of supporting the cultural reform needed to embed human rights. Their arguments are also applicable to research and statistics. Human rights discussions around adequate housing often appear to be preoccupied with the symptoms of housing problems rather than their possible causes and how these might be addressed. Part of the reason for this seems to be the limited engagement between housing and human rights researchers and analysts.
- 5.18 It is also the case that better evidence is required to deepen our understanding of the economic, social and policy conditions that contribute to abuses of the right to adequate housing in the first place. For example, we know little about how housing behaviours and choices vary between different social groups, why they vary, and how this might shape policies for delivering housing and housing assistance. We have limited understanding of how pathways into and within social housing have changed in recent years and which social groups have benefitted or lost out. There is also little hard evidence about the impact of interventions to secure housing and mental health support for people with lived experience of mental ill health.
- 5.19 There is only so much Scottish Government analysts can do to improve national administrative collections if local data suppliers cannot supply data in the first place. The drive for better evidence-based policy required by the human rights agenda will therefore require local authorities, housing associations and the Scottish Housing Regulator to devote more attention and resources to data collection, both to:
- Feed into national data collections that can be used to inform national policy development, resource allocation decisions and policy monitoring.
 - Enhance their own understanding of housing deprivation in order to inform their own budgeting and decision-making processes.
- 5.20 More generally, our review suggests that in seeking to progressively realise the right to adequate housing:
- The Scottish Government should build on the advice of the Taskforce and map out which aspects of this right to adequate housing it cannot fulfil, either in whole

or in part, for the population as a whole or irregular migrants and other social groups due to reserved powers.

- Discussions on the planned new tenure-neutral Housing Standard should revisit how we define and measure serious disrepair, dry homes and noise pollution (from indoor and outdoor sources) rather than focus solely on energy efficiency and fire safety matters.
- The Scottish Government should sponsor an independent review of data collected on statutory homeless and other hidden homelessness households against the current legal definition of statutory homeless in order to explore the number and profile of households that do not currently exercise their right to apply as statutory homeless and the reasons behind this.
- The Scottish and local Government and their stakeholders should work together to explore what additional policy actions are required to protect individuals from infringements of their human rights by third parties such as estate agents, private landlords, private developers and builders/tradesmen.
- The Scottish Government and all other public bodies should take further steps to build trust and inclusion. Amongst other things, this would help to ensure people from different social groups are willing to supply the data public bodies seek to collect.

Final words

5.21 Ultimately the human rights agenda is a means to improve people's quality of life and wellbeing rather than an end in itself. An effective human rights framework needs to be coherent and to clearly state which kind of longer-term goals it wants to achieve. In keeping with this, it is hoped that, if nothing else, this paper will spark a conversation between national and local government and other interested parties about what housing outcomes matter, what these outcomes imply for housing policy and budgeting, and how they can pull together and use all available resources to better measure progress towards the full realisation of adequate housing.

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APPENDIX 1: ACRONYMS AND GLOSSARY OF COMMONLY USED TERMS

List of acronyms

AHC: After housing costs

BHC: Before housing costs

B&B: Bed and Breakfast

BTS: Below Tolerable Standard

CESCR: Committee on Economic, Social and Cultural Rights

CRC: Convention on the Rights of the Child

CRPD: Convention on the Rights of Persons with Disabilities

DWP: Department for Work and Pensions

ECHR: European Convention on Human Rights

EHRC: Equality and Human Rights Commission

ESCR: Economic, social and cultural rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

IS: Income Support

MIS: Minimum Income Standard

OHCHR: Office of the High Commissioner for Human Rights

SHCS: Scottish House Condition Survey

SHQS: Social Housing Quality Standard

UC: Universal Credit

Glossary

Accountability and Rule of Law	<p>States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments.</p> <p>Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.</p>
Empowerment	<p>This is used in UN literature to refer to situations whereby has ample opportunity and resources so that they have the capacity to make effective choices, and thus has the capacity to effectively translate choices into desired actions and outcomes. Empowerment can also refer to efforts to empower people.</p>
European Commission on Human Rights	<p>Body established by the European Convention for The Protection of Human Rights and Fundamental Freedoms to investigate grievances of human rights and brings charges of violations. The Commission consists of a number of members equal to that of the number of contracting parties to the Convention.</p>

Equality and Non-discrimination	Every person is entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
General Comment	A treaty body's interpretation of human rights treaty provisions, thematic issues or its methods of work. General comments often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions.
Indivisibility	This term implies that all human rights civil, cultural, economic, political or social nature are vital to the dignity of every human person. It implies human rights cannot be ranked or one prioritised over another, but in practice this is rare.
Interdependence & Inter-relatedness	This means one right depends, wholly or in part, upon the realisation of others.
Judicial review	This refers to cases brought before a legal court, on the grounds that one or more provisions of an international human rights treaty to which the State is a signatory party, and/or of the national constitution, has/have been violated. If the court agrees with the rights claimant, it will decide on the remedy that the State has to provide
Minimum core standards	This concept aims to set a quantitative and qualitative floor for socio-economic and cultural rights that must be immediately realised by the state as top priority. The promise of the minimum core approach is to make give progressive realisation a clearer direction and to evaluate the steps states have taken towards the progressive realisation.
Participation	Participation is a fundamental principle for human rights and should be applied when the rights are being interpreted and developed. .
Progressive realisation	The principle of progressive realisation means that States should put in place measures that ensure the numbers of people denied their housing rights diminishes over time at a rate that is commensurate with maximum efficiency in the allocation of available resources. States are expected to regularly report to the CESCR on progress with towards realisation and that this progress is in line with the best use of national resources.
Recourse mechanisms	Recourse refers to seeking redress for a human rights violation. It commonly involves judicial or quasi-judicial (e.g., Tribunal) means of seeking redress.
State obligations	The State has legal and moral duties or obligations towards a country's inhabitants. These obligations are usually spelt out in international agreements and covenants to which the State is a party, and these may or may not be incorporated in domestic law.
Universality and inalienability	Human rights are universal and inalienable and thus all people are entitled to them and no-one should be expected to voluntarily give them up. Nor can others take them away from him or her other than in exceptional circumstances prescribed by law.

APPENDIX 2: RIGHT TO ADEQUATE HOUSING: KEY INTERNATIONAL INSTRUMENTS

The right to housing is set out in, various international laws and instruments:

- 1948 Universal Declaration of Human Rights, Article 25(1).
- 1951 Convention relating to the Status of Refugees, Article 21.
- 1954 Convention relating to the Status of Stateless Persons, Article 21.
- 1961 European Social Charter, Article 16 (Article 31 of the Revised European Social Charter that came into force in 1999).
- 1975 Declaration on the Rights of Disabled Persons, Article 9 and 28.
- 1976 International Covenant on Economic, Social and Cultural Rights, Article 11(1).
- 1979 Convention on the Elimination of All Forms of Discrimination against Women, Articles 14 and 15.
- 1986 Declaration on the Right to Development, Article 8(1).
- 1987 United Nations General Assembly resolution 42/146 on the "Realization of the Right to Adequate Housing".
- 1989 Convention on the Rights of the Child, Article 16 and 27(3).
- 1991 UN Committee for Economic, Social and Cultural Rights (CESCR) General Comment 4 on adequate housing.
- 1993 United Nations Commission on Human Settlements resolution 14/6 on "The Human Right to Adequate Housing".
- 1993 United Nations Commission on Human Rights Resolution 1993/77 on "Forced Evictions".
- 1994 United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities resolution 1994/8 on "Children and the Right to Adequate Housing".
- 1997 UN Committee for Economic, Social and Cultural Rights (CESCR) General Comment 7 on forced evictions.
- 2000 The Charter of Fundamental Rights of the European Union, Article 34.
- 2005 Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).
- 2008 European Parliament Declaration (111) on ending street homelessness.

APPENDIX 3: RECOMMENDATIONS OF THE TASKFORCE

The following rights are recommended for inclusion in the new statutory human rights framework:

1. Re-statement of the rights protected by the Human Rights Act which gives effect to the European Convention on Human Rights and includes the following civil and political rights:
 - Right to life
 - Freedom from torture and from inhuman or degrading treatment or punishment
 - Freedom from slavery or servitude or being required to perform forced or compulsory labour
 - Right to liberty and security of person
 - Right to a fair trial
 - Freedom from punishment without law
 - Right to respect for private and family life, home and correspondence
 - Right to freedom of thought, conscience and religion
 - Right to freedom of expression
 - Right to freedom of peaceful assembly and to freedom of association, including the right to form and join trade unions
 - Right to marry
 - Right to protection of property
 - Right to education
 - Right to free elections
 - Right to non-discrimination in the exercise of all of these rights

Also, incorporation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This Covenant includes for everyone economic, social and cultural rights including the following:

- Right to an adequate standard of living, including the rights to adequate food, clothing and housing and the continuous improvement of living conditions
 - Right to the enjoyment of the highest attainable standard of physical and mental health
 - Right to education
 - Right to social security
 - Right to take part in cultural life
2. Include the right to a healthy environment with substantive and procedural elements
 3. Incorporation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).
 4. Incorporation of the Convention on the Elimination of all Forms of Racial Discrimination.
 5. Incorporation of the Convention of the Rights of Persons with Disabilities.
 6. A right for older people to be included in the statutory framework.
 7. An equality clause that protects and promotes the full and equal enjoyment of rights of LGBTI people.
 8. Include an equality clause which aligns with the Equality Act 2010 and provides equal access to everyone to the rights contained within the Bill.
 9. The framework states the intent of the legislation is to give maximum possible effect to human rights and recognise that human dignity is the value which underpins all human rights. It is suggested this could be done via a purpose clause.
 10. Provide that courts and tribunals are clear on the intent of the legislation including the underpinning value of human dignity, in relation to international law and to comparative law. It is suggested this could be done through an interpretative clause.
 11. SHRC should be given additional powers including taking test cases and conducting investigations and any further extended powers should be considered.
 12. Provide for a sunrise clause approach leading to a duty to comply which secures protection for rights-holders whilst also allowing duty bearers time to prepare for full commencement of the legislative framework.

13. That there be a participatory process to define the core minimum obligations of incorporated economic, social and cultural rights, and an explicit duty of progressive realisation to support the effective implementation of the framework, which takes into account the content of each right.
14. Pre-legislative assessment to be included in the framework – which could include a requirement to certify that any proposed Bill complies with the rights contained within the framework and demonstrate where the proposed Bill contributes to the advancement of such rights.
15. Provides a duty on Scottish Ministers to publish a human rights scheme for the giving of further effect to the rights contained within this framework, to be held accountable for its implementation, to report on how a duty to take the statutory human rights framework into account during the budgetary process was met, progress made on Scotland's National Action Plan for Human Rights, and to provide for periodic reporting duties on implementation plans for the Scottish Government and public authorities.
16. Further consider the best approach to ensure there is clarity and certainty that relevant private actors carrying out public functions, and functions connected to the delivery of rights within the framework, are within the scope of the obligations in the framework.
17. Ensure the Framework allows for making statutory and non-statutory guidance, which should be developed through consultation with key stakeholders, including rights holders.
18. The Scottish Government takes steps to ensure that public authorities are supported to effectively implement the framework through provision of adequate resources and clear guidance on their duties.
19. The Scottish Government should consider how scrutiny bodies can be supported through provision of adequate resources and clear guidance on their duties within the framework to effectively oversee the framework implementation plans of duty-bearers.
20. The Scottish Government, working with civil society, community-based stakeholders and public authorities, should develop effective ways to make sure that people have the information that they need about their rights and easy access to advice on rights.
21. Engage with key stakeholders, including those who face additional access to justice barriers, to further consider accessible, affordable, timely, and effective remedies and routes to remedy provided for under the framework.
22. Further consider specific duties placed upon front-line complaint handling mechanisms and scrutiny bodies in order to enhance access to justice and ensure human rights obligations are given effect by all public authorities.
23. Explicitly allow for bodies with "sufficient interest" to bring proceedings on behalf of claimants.
24. Include in the framework an approach to standard of review of the reasonableness of a measure that takes into account international human rights law standards and comparative best practices.
25. Recommendation 25: Further consider how the framework could provide for the full range of appropriate remedies under international law to be ordered by a court or tribunal when needed, including targeted remedies which could provide for non-repetition of the breach (such as structural interdicts).
26. As part of the development of the framework, to further explore access to justice, taking into account the views of right-holders, in order to consider how the framework could help provide a more accessible, affordable, timely, and effective judicial route to remedy.
27. The Scottish Government should adopt an innovative and human rights-based approach towards engaging the public in developing the framework including the guidance and its implementation.
28. The Scottish Government should develop a large-scale public awareness campaign about the new framework.
29. The Taskforce recommends that further consideration be given to including an explicit right to participation, drawn from the principles of international human rights law, within the legislation.
30. Further consider the development and strengthening of effective monitoring and reporting mechanisms at all levels and duties at both national and public authority levels to secure better compliance with the framework. It should include consideration of a National Mechanism for monitoring, reporting and implementation as recommended by the First Minister's Advisory Group on Human Rights Leadership.

APPENDIX 4: A REVIEW OF AFTER HOUSING COST POVERTY

The definition and measurement of relative poverty

The Equalities and Human Rights Commission (2017) Measurement Framework for Equality and Human Rights applies across GB. It focuses on social outcomes in respect of education, work, living standards (which includes housing), health, justice and personal security and participation. Rather surprisingly, it makes no reference to housing affordability, either as a core indicator or in its discussion of further topics for housing. On the other hand, its core poverty indicator “the percentage of adults and children living in households below 60% of the UK median income after housing costs”.

The Scottish Government publish Scotland level poverty statistics that estimate the numbers of people that are at risk of poverty before housing costs are deducted (BHC) and after housing costs have been deducted (AHC). These Family Resources Survey (FRS) and the Households Below Average Income (HBAI)-based statistics include several indicators, of which they most widely quoted are the relative poverty measures and estimate the numbers of individuals living in households with an equivalised income below 60% of median income in the same year. The AHC relative poverty figures correspond to the EHRC core poverty indicator. Other indicators include ‘severe poverty, which is defined as people with an equivalised income below 50% of UK median income and ‘absolute poverty’, which is defined as people with an equivalised income below 60% of inflation adjusted median income in 2010–11.

Local authority level relative poverty estimates have also been derived from the Scottish Household Survey (SHS) for 2015/16-2017/18 but these are experimental and not particularly robust. HMRC and DWP also issued new local area child poverty statistics based on tax, tax credit and social security data in 2020, but again these are classed as experimental. The following discussion therefore only draws on the FRS-based statistics.

Measuring poverty is complicated. One example of this is that relative poverty and relative low incomes are not the same thing. Relative poverty is concerned with whether people lack adequate resources to meet basic needs and to participate in ordinary living patterns, customs and activities of the society they live in (Townsend, 1979).

Government statisticians have been careful to point out that poverty statistics are a ‘proxy’ for the risk of poverty. Nonetheless, the 60% threshold is a pragmatic statistical convention and several studies have indicated that it is set too low to meet what the public consider to be a minimum acceptable standard of living (Field Review, 2010; PSE, 2012, Hirsch et al, 2020). This is illustrated in Table A4.1 that shows the AHC relative poverty threshold for selected households is below the comparable MIS

The gap between BHC and AHC poverty is not a measure of housing cost induced poverty

The difference between rates of BHC and AHC relative poverty is often referred to as housing cost induced poverty, but this is not an appropriate interpretation.

The poverty statistics treat Housing Benefit as income rather than a rent rebate. This ‘artificially’ inflates BHC income by ignoring the fact that HB is tied to housing consumption and is not intended to support non-housing expenditure. In the case of homeowners, capital repayments and maintenance expenditure are excluded whereas such costs are included in rental payments.

The poverty statistics are also based on the income of all household members but it is not readily apparent that it is the appropriate basis for assessing housing affordability, especially as mortgage lending and housing benefit are generally assessed on the basis of the incomes of the householder and any partner. In any case, as already noted, research suggests households with residual incomes above the applicable AHC threshold can still face affordability problems.

Table A4.1: Net Incomes and thresholds for selected household types in 2018/19 prices, Scotland

Three-year averages	Single person with no children		Couple with no children		Single adult with children: 5-14 yrs.		Couple with children: 5-14 yrs.	
	Week	Annual	Week	Annual	Week	Annual	Week	Annual
Before housing costs								
UK median income	£347	£18,100	£517	£27,000	£621	£32,400	£792	£41,300
Scottish median income	£346	£18,100	£517	£27,000	£620	£32,400	£791	£41,300
60% of UK median income - relative poverty threshold	£208	£10,800	£310	£16,200	£373	£19,400	£475	£24,800
Scottish 2nd income decile	£222	£11,600	£331	£17,300	£397	£20,700	£506	£26,400
After housing costs								
UK median income	£260	£13,500	£448	£23,300	£537	£28,000	£725	£37,800
Scottish median income	£269	£14,000	£464	£24,200	£556	£29,000	£751	£39,200
60% of UK median income relative poverty threshold	£156	£8,100	£269	£14,000	£322	£16,800	£435	£22,700
Scottish 2nd income decile	£159	£8,300	£274	£14,300	£329	£17,100	£444	£23,100
MIS 2019 – AHC (no childcare, rent, council tax or water)	£198	£10,324	£336	£17,520	£367	£19,136	£453	£23,621
Source: Scottish Government (2020) Poverty Statistics and Hirsch et al (2020) MIS summary tables. 1. Equivalised income is calculated by dividing a household's total income by the modified OECD equivalence scale, to take account of household composition. However, the use of other equivalence scales would affect the outputs. For example, the OECD scale gives single adult a lower equivalised income relative to couples than the McClements scale 2. There is under-reporting of income in the FRS, particularly among households with very low reported incomes. 3. MIS figures are round to nearest £. Lone parent and couple MIS rates are based on 2 dependent children.								

More generally there are concerns about the inclusion of disability benefits as income. On average, this appears to reduce the risk of AHC poverty by around 6% for people in households that contain someone with a disability. It is also the case that, as with housing affordability measures, relative poverty does not allow for the possibility that households under-consume or over-consume housing, although the provision of social housing and housing benefit has helped to ensure most people experiencing chronic poverty do not experience housing deprivation (Tunstall et al, 2013).

Overall, it must be concluded that AHC relative poverty measure does not provide an appropriate basis for assessing housing affordability.

Households at risk of being overburdened by housing costs

Although not an appropriate measure of housing affordability, poverty statistics offer useful insights into the profile of households likely to be at highest risk of being over-burdened by housing costs. Table A4.2 summarises the numbers and proportion of people at risk of BHC and AHC relative poverty in the main tenures at three points from 2003-6 to 2016-19.

Published tables offer few insights into variations in the profile of households at risk of poverty in the different tenures, but the readily accessible tabular data suggests that:

- Rates of BHC and AHC relative poverty very slowly declined in the period to 2010-13 but have been of a slow upward trajectory since then.
- Rates of BHC and AHC relative poverty for owners have remained broadly static and remain lower than for renters, but owners still account for some 35% of all individuals that lived in households that were at risk of AHC relative poverty in Scotland in 2016-19.
- People at risk of AHC but not BHC relative poverty are more likely to live in the private rented sector (100,000 people) than in the social rented sector (80,000) whereas disproportionately large numbers of social renters (290,000) are in both BHC and AHC relative poverty. Social renters are also more likely to experience prolonged poverty than households in other tenures.
- The proportion of pensioners at risk of AHC relative poverty fell during the 'noughties' but has plateaued since 2010-13. In contrast the numbers of pensioners at risk of AHC, including those at risk of AHC severe relative poverty (50% of median income) have increased as the population has aged.
- Working age single persons (52%) have much higher rates of AHC poverty than working age couples (18%), which may in part reflect the fact that the costs of setting up and running a home cannot be pooled amongst households with one just one adult.
- The incidence of AHC poverty is much higher for lone parents (38%) than for couples with children (17%). It is also higher for couples (with or without children) where only one person is working full time (26%) than for couple where the partner works part-time or full-time work (5%).

The latter two bullet points suggest that single earner households will also face relatively bigger challenges in avoiding housing affordability pressures as well as greater barriers to accessing owner occupation, where demand is largely driven by dual earning buyers.

Table A4.2: Percentage of people in poverty by BHC and AHC by housing tenure, Scotland

	2003-06		2010-13		2016-19	
	%	No	%	No	%	No
People in relative poverty (below 60% of UK median income before housing costs)						
All people	18%	880,000	15%	770,000	17%	900,000
Social rented	36%	420,000	27%	290,000	32%	340,000
Rented privately	22%	90,000	18%	140,000	19%	140,000
Owned outright	18%	200,000	15%	200,000	17%	280,000
Owned with mortgage	7%	170,000	7%	140,000	7%	140,000
People in relative poverty AHC (below 60% of UK median income)						
All people	20%	980,000	18%	920,000	19%	1,020,000
Social rented	43%	500,000	33%	350,000	40%	420,000
Rented privately	38%	160,000	36%	270,000	33%	240,000
Owned outright	12%	130,000	10%	130,000	13%	220,000
Owned with mortgage	8%	190,000	8%	160,000	8%	140,000
Source: Scottish Government (2020) Poverty Statistics- supplementary and additional analysis tables						
Notes: 1. The definition of net incomes and housing costs are set out in the footnotes to Table 3.3.						
2. Figures may not add up to 100% due to rounding by Scottish Government.						

APPENDIX 5: THE SCOTTISH HOUSEHOLD SURVEY

The Scottish Household Survey (SHS) began in 1999 and is a continuous survey that is comprised of different modules. In 2012 the Scottish House Condition Survey (SHCS) was incorporated into the SHS and became one of its modules. The SHS is designed to provide reliable and up-to-date information on:

- The composition, characteristics, attitudes and behaviours of private households and individuals, both nationally and at a more local level.
- A diverse range of topics that include housing, neighbourhoods and communities, personal finance, education, health, travel, local government and local services.

The social survey questionnaire is in two parts. The household reference person, who is the highest income householder (or his/her partner) completes most of social survey, including those components of the questionnaire that deal with topics such as household composition, total income, housing and tenure, health, and access to vehicles. Once the composition of the household has been established, one of the adults in the household is randomly selected to complete the remaining part of the questionnaire, which dealing with issues such as neighbourhood problems, travel and use of public transport.

The SHS and the SHCS module play a big role in monitoring Scottish Government outcome indicators set out in the National Performance Framework and the subsidiary Housing and Regeneration Framework.

The published housing tables tend to include some breakdown by the age group, sex and marital status of the household representative but most other protected characteristics cannot be reported for reasons of privacy and confidentiality. Only around a third of household representatives in any given year are asked about the physical condition, suitability and energy efficiency of their home. This means that the achieved sample for housing questions are too small to produce meaningful statistics for less prevalent social groups.

In terms of improving the utility of the existing SHS dataset:

- It would be useful if house condition measures (such as the SHQS, disrepair, and any dampness and condensation) were segmented by the same household characteristics used to report on fuel poverty (Table 35), including householder age, household composition and income as well as the health and disability status of the householder and/or any partner.
- Given plans to introduce further policy measures for properties in multiple ownership, the re-instatement of questions of common repairs and factoring would be beneficial.
- There is a need to assess if the physical survey data can be used to estimate the numbers and tenure of 'barrier free' housing and, if so, what proportion of these homes are occupied by households that contain someone with a long-term health condition or disability.
- Local authority tabular outputs should include a table reporting EPC band ratings (ideally by tenure) and should report the actual achieved sample for each of the main local authority tables (as is the case for the national tables). This would make it transparent that actual responses to specific questions can differ from those reported in the summary table at the end of the tabular report.