

The Right to Adequate Housing in the UK – An Explainer

Katie Boyle & Aidan Flegg

Access to Justice For Social Rights
Addressing The Accountability Gap

Briefing - Economic, Social
and Cultural Rights Part Three
May 2022

3.1 Introduction / Background

This briefing document has been prepared for the Nuffield Foundation project on 'Access to Justice For Social Rights: Addressing the Accountability Gap', led by Dr Katie Boyle. It forms the third part of four briefings that explore and explain the international legal obligation to provide the rights to food, housing, and social security. This briefing explains what the right to adequate housing means in terms of international and regional law and how this can be understood domestically at both a devolved and national level. It explains **what** the right to adequate housing means, **why** both the devolved regions and the UK have an obligation to provide the right and **why** it is important to do so, and **how** this could be best realised within the context at the national level and each devolved nation. In particular, the briefing sets out the different means of legal incorporation. This means exploring the ways that we can incorporate and enforce the right in our own domestic laws. In other words, how can the UK best protect the right to adequate housing? The importance of ensuring a human rights-based approach to housing should not be underestimated.

It is a key component of international human rights law, and in particular, economic, social and cultural (ESC) rights. ESC rights cover rights including housing, employment, health care, education, and an adequate standard of living. They more broadly protect marginalised groups such as those living in poverty, women, children, the elderly, disabled persons, migrants and so on. ESC rights are also often overlooked in the UK's legal systems, including at the devolved level, and so require further exploration to ensure that they are properly implemented into domestic law (known as incorporation). Housing is also a devolved area, meaning Wales, Northern Ireland (NI), and Scotland all have powers to implement and effect changes to housing policy and practice.

The right to adequate housing is protected in international and regional law. The UK is under an obligation to comply with various treaties (international agreements) that the State has agreed to be bound by. The following table shows what kind of treaty provisions exist and whether the UK, and the devolved jurisdictions, are under a **binding** obligation to comply with them:

Treaty/ provision	Status in UK and Scots law	Is it binding?
Article 11 ICESCR right to an adequate standard of living	Signed and ratified – not incorporated	Yes
General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant) General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions	Interpretative in terms of fulfilling right to adequate housing under Article 11 ICESCR	Yes
Optional Protocol to ICESCR	Not signed or ratified	No – this means there is no access to the international complaint mechanism

Art 25 UDHR right to adequate standard of living	Universally applicable	Yes
Article 27 of the Convention on the Rights of the Child	Signed and ratified	Yes
Article 21 of the Convention relating to the Status of Refugees	Signed and ratified	Yes
Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women	Signed and ratified	Yes
Article 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	Signed and ratified	Yes
Article 9 and 28 of the Convention of the Rights of Persons with Disabilities	Signed and ratified	Yes
Article 16 right of the family to social, legal and economic protection including provision of family housing European Social Charter (ETS No. 35), adopted in 1961	Signed and ratified (not a full right to housing – see revised treaty below)	Yes
Article 31 right to housing Revised European Social Charter (ETS No.163), adopted in 1996	Signed but not ratified	No
Additional Protocol to the European Social Charter Providing for a System of Collective Complaints	Not signed or ratified	No – this means there is no regional complaint mechanism

3.2 What is the Right to Adequate Housing?

The UN Committee on Economic, Social and Cultural Rights (CESCR), the body responsible for overseeing compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR), provides helpful explainers, called ‘General Comments’ that demonstrate how a country can comply with its international obligations. General Comments 4 and 7 give a comprehensive overview of what is required to respect, protect, and fulfil the right to adequate housing.¹

General Comment No.4 defines adequate housing as the right of all persons, regardless of their income or economic resources, to ‘live somewhere in security, peace and dignity.’² The following headings give a summary of the right and what exactly it involves:

- **Availability:** Of services, material, facilities, and infrastructure. In particular, access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of adequate housing storage, refuse disposal, site drainage and emergency services.
- **Cultural Adequacy:** The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.
- **Habitability:** Adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.
- **Affordability:** Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised; housing costs commensurate with income levels; housing finance that reflects housing needs; protection from unfair rent/ rent increases/ access to affordable housing material.
- **Accessibility:** For all disadvantaged groups
- **Security of tenure:** Such as legal protection against forced eviction.

- **Appropriate location:** Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities.
- **Adoption of a national housing strategy:** This strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.

In January 2018 the UN Special Rapporteur on the Right to Housing introduced a set of key principles upon which effective rights-based housing strategies should be based:³

- Principle 1: based in law and legal standards
- Principle 2: prioritise those most in need and ensure equality
- Principle 3: comprehensive and whole-of-government
- Principle 4: rights-based participation
- Principle 5: accountable budgeting and tax justice
- Principle 6: human rights-based goals and timelines
- Principle 7: accountability and monitoring
- Principle 8: ensuring access to justice
- Principle 9: clarify the obligations of private actors and regulate financial, housing and real estate markets
- Principle 10: implement international cooperation and assistance

Further, in 2019 building upon the principles above, the Special Rapporteur outlined sixteen guidelines for implementation of the right to adequate housing:⁴

- Guideline 1: Guarantee the right to housing as a fundamental human right linked to dignity and the right to life.
- Guideline 2: Take immediate steps to ensure the progressive realisation of the right to adequate housing in compliance with the standard of reasonableness.
- Guideline 3: Ensure meaningful participation in the design, implementation and monitoring of housing policies and decisions.
- Guideline 4: Implement comprehensive strategies for the realisation of the right to housing.
- Guideline 5: Eliminate homelessness in the shortest possible time and stop the criminalisation of persons living in homelessness.
- Guideline 6: Prohibit forced evictions and prevent evictions whenever possible.
- Guideline 7: Upgrade informal settlements incorporating a human rights-based approach.
- Guideline 8: Address discrimination and ensure equality.
- Guideline 9: Ensure gender equality in housing and land.
- Guideline 10: Ensure the right to adequate housing for migrants and internally displaced persons.
- Guideline 11: Ensure the capacity and accountability of local and regional governments for the realisation of the right to adequate housing.
- Guideline 12: Ensure the regulation of businesses in a manner consistent with State obligations and address the financialisation of housing.

- Guideline 12: Ensure that the right to housing informs and is responsive to climate change and address the effects of the climate crisis on the right to housing.
- Guideline 14: Engage in international cooperation to ensure the realisation of the right to adequate housing.
- Guideline 15: Ensure effective monitoring and accountability mechanisms.
- Guideline 16: Ensure access to justice for all aspects of the right to housing.

3.3 Key International Obligations

In relation to securing the content of the right to adequate housing, the ICESCR contains several explicit international obligations binding on the UK to progressively realise the right. What this means in practice is explored below. The full suite of obligations are covered in more detail in Briefing One.

The obligation to progressively realise the right to housing requires the UK to:

- Take steps to realise the right through concrete strategies.
- Respect, protect and fulfil the right.
- Gather and deploy the maximum available resources to realise the right in a way that is effective, efficient, adequate and equitable.
- Ensure non-discrimination in realisation of the right.
- Provide an immediately realisable minimum core of the right.
- Refrain from retrogressive steps (i.e. no backsliding on rights) unless exceptional circumstances only justified if the step is reasonable, proportionate, non-discriminatory, temporary, that it does not breach the minimum core obligation and that all other potential alternatives were considered.⁵

- Any limitation on the enjoyment of a right can only be justified according to principles of legality, legitimacy, and proportionality.
- Provide access to an effective remedy if a violation of the right occurs.
- The following section further explains how these key obligations operate in relation to the right to housing specifically.

3.3.1 Progressive Realisation of the Right to Adequate Housing

The nature of the obligation requires that states respect, protect and fulfil the right. This means States should progressively improve the right to adequate housing to the maximum of their available resources (i.e. the amount of revenue the State generates). The State must take steps to refrain from acting in a way that would undermine the right to adequate housing – i.e. take any action that results in reducing the right (the duty to **RESPECT**); the State must also take action to prevent others from interfering with enjoyment of the right, including private third parties that may be responsible for housing in the private sector, such as private landlords or building contractors (the duty to **PROTECT**); and the State must facilitate, promote and provide the right to housing by taking the necessary steps to ensure the right can be enjoyed by all to the maximum of its available resources (the duty to **FULFIL**). States should avoid measures which reduce access to or delivery of the right (non-retrogression). Any violation (breach) of the right can only be justified in the most exceptional of circumstances and States must be able to explain that the action was reasonable, proportionate, non-discriminatory and that all other potential alternatives were considered.

Fulfilling the right to adequate housing places a duty on States to adopt ‘enabling strategies’ to ensure that the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.⁶ In addition, it is also important to note States that have agreed to provide the right to adequate housing have also agreed to provide an effective remedy if there is a failure to meet the obligation. This includes facilitating access to a legal remedy in court if

necessary.⁷ What constitutes an ‘effective remedy’ may include (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.⁸

In accordance with article 2(1) of the ICESCR and the obligation to progressively realise the right to adequate housing, States parties must ensure they take effective measures within their maximum available resources to fully realise the right of all persons without any discrimination.⁹ In relation to food, the UK must use the maximum resources available to it to ensure the right to adequate housing is realised for all. Evidently linked to budgetary decision-making, the duty requires the UK government to adequately generate, allocate, and spend resources to the maximum extent. The nexus between budgeting for housing and the right to housing has been explored in Belfast and brings to light the importance of resourcing policy for social housing projects.¹⁰ Moreover, in relation to MAR, the Special Rapporteur has advised,

“Public funds must first be spent to house the homeless before considering other expenditures, such as embarking on a programme to increase the housing quality for those who are already in housing. Secondly, it also means that States that have failed to reduce and eliminate homelessness must show that they have actually lacked the required resources to do so, in order to remain in conformity with their obligations under Articles 2 (1) and 11 (1) and under the International Covenant on Economic, Social and Cultural Rights.”¹¹

Meaning, where housing is not being progressively realised or if there are retrogressive steps (backsliding on protection) without justification, this conflicts with the obligations under ICESCR..

If a regressive budgetary decision is made in relation to housing policy, the duty ensures there is an increased justificatory burden upon the State to explain its decision to reduce funding.¹²

Over and above the duty to respect, protect and fulfil, or to progressively realise the right to adequate housing, there is an additional requirement that all States must provide with immediate effect. This is called a minimum core. This can be understood as a non-negotiable absolute right to a basic level that the State has a duty to provide immediately. The minimum core means providing a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, adequate housing stuffs, and the most basic forms of education.¹³ The minimum core requires States to address homeless and inadequate housing within their jurisdictions.¹⁴ Forced evictions are considered to breach the right to housing and are only allowed in limited circumstances. When a forced eviction does occur, there should be consultation in advance, fair processes, and an opportunity to seek a remedy and those being evicted must be offered alternative accommodation.¹⁵

Access and delivery of adequate housing should not exclude groups, particularly those who are marginalised and possibly ‘hidden’ from the system. In particular States are under a duty to effectively monitor housing and to “provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing”.¹⁶ They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.¹⁷ This means that housing strategies and policies must target and prioritise those that are most vulnerable and should not result in more advantaged groups benefiting at the expense of others.¹⁸

3.4 The UK Human Rights Framework and the Right to Adequate Housing

The UK does not have a codified constitution with human rights protected through a number of different statutes taking on a ‘constitutional’ status

including the Human Rights Act 1998, the Scotland Act 1998 and the Equality Act 2010 for example. None of these statutes incorporate the right to adequate housing as determined by international law. Unless housing legislation is designed in a way that complies with international human rights law, there is a potential accountability gap that means people continue to experience violations of the right without recourse to a remedy. The proposed new statutory framework for human rights in Scotland, which includes the right to adequate housing, would transform this framework in Scotland.

The UK has partially incorporated the European Convention of Human Rights (ECHR) into domestic law through the Human Rights Act 1998 as well as each of the devolved statutes. Section 29(d) of the Scotland Act limits the competence of the Scottish Parliament in so far as any Act passed that is incompatible with ECHR rights or retained EU law is not law (the Courts can declare said Acts void with immediate effect). Section 101 of the Scotland Act compels the reading of Acts of the Scottish Parliament to be read as narrowly as is required to be within devolved competence and any act by the Scottish Ministers is deemed *ultra vires* (unlawful) if it is in breach of ECHR (section 57). Similar provisions constitute the devolved settlements in Northern Ireland¹⁹ and Wales.²⁰

The ECHR has protected the right to housing through a broad interpretation of the right to private and family life (Article 8). This expansive interpretation is indicative of what is called a 'dynamic' or 'evolutive' interpretation of civil and political rights. The European Court of Human Rights has referred to international human rights law, including the ICESCR in its decisions. For example, a 'dynamic' approach to interpretation of Article 8 (right to private and family life), includes acknowledgement of the right to adequate housing respecting the cultural dimensions in the case of nomadic travellers (*Connors*);²¹ protection from unlawful eviction when makeshift houses were built to form an unlawful Roma settlement;²² and that because the "loss of one's home is the most extreme interference with the right to respect for one's home" any interference with the right must be proportionate, necessary and in accordance with the law.²³ In the latter case, the Court recognised a positive duty on the State to ensure that eviction must be proportionate and necessary

in a democratic society.²⁴ The Court specifically referred to various international standards,²⁵ including the standard set by the ICESCR:

*'[E]victions must meet a number of conditions, such as prior consultation with the persons to be evicted, the giving of adequate and reasonable notice as to when the eviction will take place and the availability of judicial remedies. If those evicted cannot provide for themselves, States should take all reasonable measures, utilising all available resources, to ensure the provision of adequate alternative housing.'*²⁶

Although the decision of the court was not in itself based on the ICESCR provisions, there was, at the very least, reference within the judgment to the standard stipulated in international law. As Rémiche identifies 'the Court did not explicitly mobilise [the international instruments] in its assessment of the merits of the case. This lack of explicit mobilisation should nevertheless not lead to the conclusion that the principles they encapsulated were disregarded. On the contrary, it is submitted that *Yordanova* demonstrates that the Article 8 right to respect for one's home is not interpreted in isolation from the right to adequate housing, protected by the ICESCR and the ESR [European Social Charter].'²⁷ In the UK this has meant that Article 8 has, for example, been interpreted as extending a right to an occupier of social housing to challenge the proportionality of an eviction order in the cases of *Pinnock* and *Powell*.²⁸ In Scotland the courts have adopted this approach and based on cases such as *Pinnock* and *Powell* extended the right to housing in the context of evictions, albeit in a limited sense. Article 8 does not fully provide for the right to adequate housing but partially protects some aspects of it.²⁹ Other examples of ECHR applicability in the case of housing is found in cases such as *Mitchell v Glasgow City Council* where Lord Rodger stated that "if the Council had allowed their housing stock to fall into disrepair, so that tenants were at risk of suffering life-threatening injuries or of becoming seriously ill, the Council could have been in breach of article 2."³⁰

3.4.1 Is the UK Complying with the Right to Adequate Housing?

As part of the UK's international obligations the State undergoes a number of treating monitoring exercises in which the UK must justify its approach to different rights, including the right to adequate

housing. In 2013 the UK underwent scrutiny by the UN Special Rapporteur on housing who raised significant concerns about access to the right including the adverse impact on particularly vulnerable groups including those living in poverty, homeless persons, the disabled, the elderly, young people, Gypsy traveller community, migrants, Roma and the catholic community in Northern Ireland.³¹ The UK has for a long time provided welfare and benefits through a number of different statutory schemes and when asked about implementing the right to housing the UK refers to the broad base of welfare based legislation that constitutes the structure of the welfare state.³² However, the legislation, whether derived from Westminster or the devolved level, is not necessarily designed to comply with international standards, which can create a housing rights gap.

In 2016, the UN CESCR, the body responsible for monitoring UK compliance with ICESCR, raised concerns about the ‘persistent critical situation in terms of the availability, affordability and accessibility of adequate housing... in part as a result of cuts in State benefits.’³³ The CESCR also raised concerns about the lack of social housing, forcing households to move into the private rental sector, which is also not adequate in terms of affordability, habitability, accessibility and security of tenure.³⁴ The CESCR further noted the significant rise in homelessness, particularly in England and Northern Ireland affecting mainly single persons, families with children, victims of domestic violence, persons with disabilities and asylum seekers. The CESCR also raised concern about the adverse impact that reforms of social security and reductions in financial support to local authorities have had on the right to adequate housing, especially with regard to the criminalisation of rough sleeping.³⁵

In relation to Scotland specifically, the CESCR highlighted the chronic shortage of social housing particularly for the most disadvantaged and marginalised, such as persons with disabilities.³⁶ The UN Committee on the Rights of the Child (UNCRC) has urged Scotland, as well as other parts of the UK, to strictly implement the legal prohibition of prolonged placement of children in temporary accommodation by public authorities; to reduce homelessness and to ensure that children have access to adequate housing that provides physical safety, adequate space, protection against

threats to health and structural hazards, including cold, damp, heat and pollution and accessibility for children with disabilities; and to introduce a statutory duty for local authorities to provide safe and adequate sites for travellers.³⁷ In relation to NI, the CESCR echoed the findings of the UN Special Rapporteur and encouraged the NI Assembly to ‘intensify its efforts to address the challenges to overcoming persistent inequalities for Catholic families in North Belfast, including through meaningful participation by all actors in decision-making processes related to housing’.³⁸

In 2019 the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance identified key State failings in the right to adequate housing for different minority groups. For example, the Special Rapporteur’s UK report detailed that children from Pakistani or Bangladeshi households (28.6 per cent) and Black households (24.2 per cent) were more likely to live in substandard accommodation than those in White households (18.6 per cent).³⁹ The report noted that the Race Disparity Audit found that, in England in 2015–2017 Black African and Black Caribbean households were the ethnic groups most likely to rent social housing (47 per cent and 45 per cent respectively).⁴⁰ The Special Rapporteur also drew attention to the 2013 Scottish Parliament Equalities Committee report setting out that Gypsies and Travellers lived in “horrendous conditions”. For example, the Committee observed that families paying rent to their local council were “expected to bathe young children in freezing cold amenity blocks with extortionate heating costs”. The Committee also observed unacceptable conditions in some settlements, including “a putrid overflowing septic tank”, and wrote “that elderly and disabled people might have to go outside to a toilet block in the middle of a cold, winter’s night”. The Special Rapporteur’s own consultations with Gypsy, Roma and Traveller communities revealed that access to adequate housing solutions that respect ancestral nomadic traditions remain a major challenge across the United Kingdom, especially in Wales.⁴¹

In 2019 the UN Special Rapporteur on Poverty also identified key State failings in relation to housing stating:

“[i]n England, homelessness rose 60 per cent between 2011 and 2017 and rough sleeping rose 165 per cent

from 2010 to 2018.⁴² The charity Shelter estimates that 320,000 people in Britain are now homeless,⁴³ and recent research by Crisis suggests that 24,000 people are sleeping rough or on public transportation – more than twice government estimates.⁴⁴ Almost 600 people died homeless in England and Wales in 2017 alone, a 24 per cent increase in the past five years.⁴⁵ There were 1.2 million people on the social housing waiting list in 2017, but less than 6,000 homes were built that year.”^{46,47}

The report also indicated that:

“Housing Benefit has been decimated amidst a real crisis in affordable housing. Housing costs are rising disproportionately for people on low incomes, and the recent uptick in pensioner poverty is driven by increasing poverty among renters.⁴⁸ While the Government has recognized the challenges and pledged to invest billions in improving the housing supply,⁴⁹ targeted support for low-income people has been repeatedly reduced and restricted. Similarly, the Government has refused to walk back the benefit reduction for renters in so-called “underoccupied” social housing, despite consistent feedback that this reduction can pose immense hardship for low-income families and individuals who may not be able to relocate easily.”⁵⁰

The data under the Nuffield Foundation Access to Justice for Social Rights project suggests that the practical implications of the lack of ESC rights protections manifests in a “litany of social rights violations across multiple areas”⁵¹ including the right to adequate housing. For example, practitioners highlighted issues with access to justice mechanisms where people do not receive adequate advice or representation in adversarial eviction processes (where often the landlord is represented and the tenant is not). Practitioners also raised concerns with regard to the adequacy of housing standards and insufficient legal rights to ensure adequate heating, ventilation or to address issues like mould and damp or to ensure habitability of housing – several practitioners noted relying on charity to provide gas, electricity, furniture and white goods for those in housing need. There were concerns raised about the lack of accountability in the private sector, including both poor standards of housing and processes of eviction without due process. There are also significant barriers faced by different groups. For example the minority

Catholic population in North Belfast still constitute 94% of housing need. Likewise, research in Scotland highlighted the implications of the hostile immigration environment, where those seeking asylum are faced with precarious housing conditions (including eviction without notice and unrealistic demands on tenants remaining in accommodation, unable to visit friends or family). There is sufficient evidence to suggest that, even if there are examples of good practice in the provision of adequate housing, the UK is not meeting its international obligation to provide for the right to housing in a manner compliant with international human rights.

3.4.2 What steps can the UK take to comply with the right to adequate housing?

The most comprehensive step that can be taken at the UK level is to incorporate the right to adequate housing into domestic law. Incorporation of international law into domestic law means embedding legal standards as set out in international law and making them enforceable at the domestic level.⁵² Direct incorporation of international treaties into domestic law is what is required within the UK constitution if international law is to acquire binding status domestically. However, it is worth noting that the concept of incorporation can be much further reaching than a direct reference to an international instrument. Incorporation can take many different forms and here we use the broadest definition of what that might mean. In other words, incorporation is referred to as a means of internalising international law into domestic law, whether explicit or implicit, whether directly or indirectly, or whether through means of an ‘incorporating provision’ or by means of growing a domestic based constitutional model inspired by and derived from international human rights law. Constitutions all over the world internalise international human rights standards without necessarily directly referencing the treaty. The wider definition of incorporation recognises that fact and includes a domestication of treaty provisions in a way that is completely contextualised within the specific constitutional setting it springs from. Compliance with international human rights treaties can therefore occur through domestic internalisation of international norms by way of a variety of means.⁵³ Constitutional theory tells us the most appropriate way to incorporate and enforce ESC rights is through a multi-institutional approach

where obligations and expectations are placed on the legislative, executive, and judicial branches through an overarching constitutional framework.⁵⁴ Ultimately, the most robust form of incorporation is to grant a direct or indirect form of domestic recognition to international human rights law that is enforceable and coupled with effective remedies.⁵⁵

The United Nations human rights monitoring bodies have advised that the fulfilment of human rights requires States to take action at the domestic level in order to create the necessary legal structures, processes and substantive outcomes for human rights protection. Several UN Committees have recommended that the UK both incorporates international human rights law and ensures effective justiciable remedies are made available for non-compliance.⁵⁶ For example, the Committee on the Rights of the Child suggests that fulfilment of international obligations should be secured through incorporation of international obligations⁵⁷ and by ensuring effective remedies, including justiciable remedies are made available domestically.⁵⁸ The UN CESCR has called for justiciable remedies for violations of ESC rights.⁵⁹ The Committee also indicates that a blanket refusal to recognise the justiciable nature of ESC rights is considered arbitrary and that, ideally, ESC rights should be protected in the same way in the same way and to the same degree as civil and political rights as civil and political rights within the domestic legal order.⁶⁰ This could mean, for example, expanding the scope of rights protection under the Human Rights Act, the devolved statutes, the common law and specific policy based legislation to including specific legislation comprehensively setting out what the right to adequate housing would mean in a UK context (a sectoral approach). Given the devolved nature of the area, incorporation at the devolved level falls within the competence of each of the devolved legislatures.

The UN CESCR has recommended that the State:

- Addresses its housing deficit by ensuring a sufficient supply of housing, especially for the most disadvantaged and marginalised groups, including middle and low-income individuals/ households, young people, and persons with disabilities.

- Regulates the private rental sector, including through security of tenure protection and accountability mechanisms.
- Addresses bad housing, including substandard housing and conditions and uninhabitable housing.
- Ensures access to adequate access to culturally appropriate accommodation for the Roma, Gypsy and Traveller communities with access to adequate services such as water and sanitation; and
- Addresses outstanding issues relating to homelessness.⁶¹

The UN Special Rapporteur on Poverty has also urged the State to “reverse particularly regressive measures such as the benefit freeze, the two-child limit, the benefit cap and the reduction of the Housing Benefit, including for underoccupied social rented housing;”⁶²

3.5 How Can the UK’s Devolved Nations Comply with the Right to Adequate Housing?

The UK has a unique constitutional framework. It is made up of four separate nations and three legal jurisdictions. Where the UK Parliament retain reserved powers over crucial areas such as foreign policy and government borrowing, under the terms of devolution, certain policy areas are devolved to the Scottish Parliament, the Northern Irish Assembly, and the Welsh Senedd. Housing is an area where there is a high level of devolved competence across the three devolved nations of the UK. Meaning, in practice, there are options available to each devolved nation to provide further protections for the right to housing.

The devolved legislatures across the UK have already taken significant steps to either implement or incorporate international human rights obligations into domestic devolved law under the devolved competence to ‘observe and implement international obligations’.⁶³ In Scotland the First Ministers Advisory Group⁶⁴ and the National Taskforce⁶⁵ for Human Rights

Leadership has recommended a Human Rights Act for Scotland that incorporates economic, social, cultural and environmental rights via a number of international treaties. The Welsh Senedd has set out plans to follow suit.⁶⁶ In 2021, the Scottish Parliament unanimously passed the UNCRC Incorporation (Scotland) Bill incorporating the UN Convention on the Rights of the Child into devolved Scottish law. The UK government challenged the legislation in the Supreme Court, however, although the court decided that the Bill requires technical changes relating to devolved competence,⁶⁷ there is no “issue with the Scottish Parliament’s decision to incorporate the UNCRC” into devolved law. In Northern Ireland the Ad Hoc Committee on a Bill of Rights is revisiting the peace agreement commitment to design a Bill of Rights for the particular circumstances of Northern Ireland. The Northern Ireland Human Rights Commission’s proposals, following a ten-year participatory process, recommended the incorporation of economic, social, cultural, and environmental rights as part of this renewed framework building on ECHR protections.⁶⁸

There is scope for incorporation of the right to adequate housing under each of the devolved jurisdictions in the UK within devolved competence.

3.5.1 How Can Scotland Comply with the Right to Adequate Housing?

Under the terms of devolution, the Scottish Parliament has the devolved competence to implement international obligations in devolved areas.⁶⁹ Scotland has taken steps to provide housing and, in many respects, although not necessarily explicitly, does so in a way which is compatible with human rights. For example, the Homelessness etc. (Scotland) Act 2003 has been commended as an example of best practice by UN treaty monitoring bodies, especially its provision relating to the right to housing as an enforceable right.⁷⁰ Other examples of good practice include, the Homeowner and Debtor Protection (Scotland) Act 2010; the abolition of priority need in homelessness applications in 2012; more robust tenancy arrangements introduced under the Private Housing (Tenancies) (Scotland) Act 2016; the Repairing Standard imposing an obligation on landlords to maintain minimum habitability requirements under the Housing (Scotland) Act 2006; and the Scottish Social

Housing Charter 2012 which sets out standards of quality in the social housing sector.

More could be done to ensure that Scotland complies with the international standards set out in ICESCR and other international treaties. Scotland’s proposed new statutory framework for human rights would fill this gap. If seeking to ensure compliance with international human rights the Scottish Parliament and Scottish Government must create a devolved framework that ensures availability; adequacy; habitability; affordability; accessibility; security of tenure; provides housing in appropriate locations and the adoption of a national housing strategy – each of the components required in international law. Part of this requirement should include ensuring access to effective remedies should for any reason access to the right to housing be undermined.

3.5.2 How Can Wales Comply with the Right to Adequate Housing?

As in Scotland, housing is a devolved matter with the Welsh Senedd having powers to ensure the right to adequate housing is realised in Wales. Alongside the Human Rights Act 1998 which incorporates the ECHR into UK law and section 1 of the Equality Act 2010 which provides a socio-economic duty for public bodies throughout the UK, there have been several Measures and Acts passed by the Welsh government in relation to housing. For example, the Rights of Children and Young Persons (Wales) Measure 2011 provides that Ministers, when exercising their functions, must have due regard to children’s rights including to adequate housing under Article 27 of the UNCRC.⁷¹ A further example can be found in the Well-being of Future Generational (Wales) Act 2015, which imposes a well-being duty on relevant authorities requiring them to carry out sustainable development in ‘pursuit of the economic, social, environmental and cultural wellbeing of Wales’.⁷² The most significant recent legislation passed in relation to provision of housing is the Housing (Wales) Act 2014 which requires, above other duties, local housing authorities to do more to prevent homelessness and to act to ensure the Roma community have adequate places to stay.⁷³ The Act ensures there is a duty upon local authorities to assess applications for housing with regards to if the applicant is ‘threatened’ by homelessness.⁷⁴

Despite this stronger duty, there was a 44% rise in rough sleepers in Wales, though this figure may be exaggerated slightly by new data collection methods brought in after the 2014 Act.⁷⁵ The report by the Equality and Human Rights Commission on Wales included within its key findings in relation to standards of living: 'Rough sleeping has increased and high levels of homelessness remain a concern. Evidence links this to recent UK-wide reforms to social security, as well as a lack of affordable housing and reductions in local authority budgets in Wales to tackle homelessness'.⁷⁶ In fact, the report indicated housing issues in Wales are worsening in a range of areas from tenure, to overcrowding.⁷⁷ While the 2014 Act was an important step forward and has demonstrated some willingness from Welsh decision-makers to provide explicit protections for housing, it is essential to raise the impact of welfare and social security decisions on people's enjoyment of the right to housing and this remains a reserved matter. This has meant the measures taken by the Welsh government to ensure housing for all have been undermined, and Shelter Cymru highlight extensive housing issues facing the population with inadequate social security provision or housing benefits often cited as a fundamental problem.⁷⁸ Further, the Acts passed in relation to housing only ensure a 'duty to assess'. There remains no right to adequate housing, leaving many without access to an effective remedy and an ongoing implementation gap for the right to housing.

Work has been carried out in Wales recently exploring the option to incorporation of the right to adequate housing into domestic law.⁷⁹ More importantly yet, there seems to be political support for such action in Welsh parties. As Hoffman provides: 'Incorporating the right to adequate housing in Wales would provide a bridge between international law and Welsh housing policy, as well as the housing responsibilities of the Welsh government and local authorities.'⁸⁰ Devolution of housing means Wales can act independently to ensure the right to adequate housing in Welsh law. This would be the most effective and efficient path to realising the right to housing for all in Wales. What Hoffman, through the report, suggests is for Wales to adopt a dual approach to incorporation. The dual approach involves both direct and indirect or sectoral elements of legal incorporation which essentially would allow for a level of flexibility within competing concerns

for Welsh public authorities, but also ensure that where decisions unreasonably or disproportionately impact upon housing, routes to a remedy for groups and individuals remain available via the courts. Hoffman's report provides a path for the Welsh government to follow, to respect, protect and fulfil adequate housing for all, and match its recent human rights rhetoric in practice.

3.5.3 How Can Northern Ireland Comply with the Right to Adequate Housing?

While the 'parity' kept with the UK's approach to social security undermines the right to adequate housing as well as social security, with the two interrelated, the NI assembly have powers available to them to better comply with the right to housing. As with the other devolved administrations, NI have devolved powers over housing, opening more direct avenues from which to comply with international human rights obligations. Further, according to the NI Act, there is a statutory legal duty via section 75 on all public bodies to exercise their functions with 'due regard' to the promotion of equality of opportunity and regard to the desirability of promoting good relations amongst specific groups.⁸¹ This includes those with responsibility for housing policy such as the Northern Ireland Housing Executive, who provide strategic decision making for housing in NI. Issues relating to housing in NI have been contentious for many years, with politics playing a defining role within areas such as housing allocations both before and after the Good Friday Agreement.⁸² As Wallace's exploration brings to light, is violations of the right to housing are widespread in NI, with inequality, politics, and religion all prominent driving factors.⁸³

In 2016, the CESCR stated explicit concerns in relation to:

*'[P]ersistent inequality in the access to adequate housing in North Belfast, affecting Catholic families in particular', recommending the NI assembly 'ensure adequate access to culturally appropriate accommodation and stopping sites for the Roma, Gypsy and Traveller communities, as appropriate; take steps to avoid all forms of discrimination in the provision of accommodation; and repeal the Unauthorised Encampments (Northern Ireland) Order 2005.'*⁸⁴

Further concerns were raised over rising homelessness within the report.⁸⁵ Since 2016, reports in NI have shown little change of direction, with a continued violations of the right to adequate housing, from the devastating effects of homelessness on the rise, to very serious concerns over the rights of Roma travellers in NI.⁸⁶ The NI Human Rights Commission has recently surmised: ‘the inexorable impact of public policy has been to leave many Travellers with an unpalatable choice of retaining their culture while living in poor housing conditions or move into social housing.’⁸⁷ The report goes into great depth, outlining the many challenges faced by the travelling community in NI, breaking down the conditions available with respect to what is expected from the human rights perspective. Beyond specific issues to the Travelling community, as is a prominent issue in Scotland as well, a report conducted by Sinn Fein in 2019, using a range of data sources, emphasised issues with the supply and provision of social housing in NI.⁸⁸ The report urged the need for a new approach to social housing, with ‘on average less than 2,000 new social homes per year [being] delivered over the last decade’ and over 12,000 people being reported as homeless.⁸⁹ Many of whom are families and in work.⁹⁰ The report discusses the need for a human rights based approach to housing in NI, showing promising signs for a shift in approach. However, further and more extensive changes is urgently required.

The Department for Social Development is responsible for housing, though practically, the NI Housing Executive (NIHE) delivers upon the right. A series of NI housing Orders have been passed, placing duties upon the NIHE from preparing schemes for reparation work,⁹¹ secure housing for homeless persons,⁹² and dealing with anti-social behaviour in housing.⁹³ Meaning, much of the policy is set via the NIHE and some housing associations. This role could be strengthened via new legislation to ensure the NIHE is legally bound to take into consideration the right to adequate housing within its decision-making processes. This ‘indirect’ incorporation of the right to housing would build upon previous NI Orders in relation to housing but reinforce the need for decision-making over housing to be led by a human rights-based approach. Importantly, it would not require significant funding from the NI Assembly, which has been highlighted previously as a key problem area but would ensure the practical decision-making around housing provision in NI is rights based.⁹⁴

Other recommendations have been made in relation to the right to housing. In 2009, after a ten year consultation period, the Northern Ireland Human Rights Commission recommended the incorporation of economic, social, cultural, and environmental rights including the right to adequate housing.⁹⁵ In the New Decade New Approach the priorities of the restored executive included bringing about “positive changes in areas that impact greatly on people’s lives such as the economy, overcrowded hospitals, struggling schools, housing stress, welfare concerns and mental health”.⁹⁶ While undoubtedly positive in relation to the right to housing, for NI to comply with the right to housing, incorporation, whether directly or indirectly via new piecemeal new legislation, would provide the best path to fulfilling the right to housing for all in NI. There is scope for further consideration, as is evident in Wales and in Scotland, to outline the path to incorporation in NI.

3.6 Models of Incorporation / Justiciability of the Right to Adequate Housing: Lessons from International Best Practice

International human rights standards can be incorporated (translated) into domestic law through many different models some of which are explored here. The UK, and its devolved administrations, can learn lessons from these comparative models that offer insights into how to address the right to adequate housing. The models of incorporation differ across countries and so too do the mechanisms which ensure access to an effective remedy. This means we see a broad range of constitutional guarantees coupled with a wide variety of different approaches adopted by courts in protecting those constitutional guarantees. The approaches courts take are important because it gives us insight into the different types of ‘justiciability’ available (adjudication by a court). Justiciability mechanisms can offer different degrees of enforcement – sometimes courts are very reluctant to interfere with guaranteeing a particular right (they are deferential to parliament/government) and other times the court will take significant steps in protecting the right. Each of these approaches is discussed below. Ultimately it is for each State to create the legal structures and implementation mechanisms to effectively provide for human rights. At a basic level however, it is important to remember that normally there

requires to be some form of legal structure in place, a process that leads to a human rights compatible outcome and a remedy available should the structure or process fall short of human rights compliance.

States across Europe have recognised the right to housing in their constitutions. The Belgian constitution provides a right to decent accommodation.⁹⁷ The Finnish constitution imposes a duty on public authorities to promote the right of everyone to housing and the opportunity to arrange their own housing.⁹⁸ The Swedish Constitution provides that “public institutions shall secure the right to employment, housing and education, and shall promote social care and social security, as well as favourable conditions for good health.”⁹⁹ In Switzerland, the Constitution encourages the development of suitable housing to ensure that any person seeking accommodation for themselves or their families can find suitable accommodation and that housing schemes should account in particular for the interests of families, elderly persons, persons on low incomes and persons with disabilities.¹⁰⁰ In Spain, citizens are entitled to decent and adequate housing.¹⁰¹ In Ukraine, the right to housing includes providing those in receipt of social protection with housing free of charge or at a price affordable for them, in accordance with the law.¹⁰² The Portuguese Constitution provides that everyone shall possess the right for themselves and their family to have an adequately sized dwelling that provides them with hygienic and comfortable conditions and preserves personal and family privacy.¹⁰³ In Poland, public authorities are under a constitutional duty to pursue policies conducive to satisfying the housing needs of citizens, in particular combatting homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.¹⁰⁴ In the Netherlands, the Dutch constitution provides that authorities should provide sufficient living accommodation.¹⁰⁵ Constitutional recognition of a right to housing is not unique to Europe – countries all over the world have incorporated a right to housing in their constitutions.¹⁰⁶

In the UK there is no constitutional right to housing and no incorporation of an international treaty that protects the right to housing (the ECHR is minimal in its protection). Housing is provided for under various legislative schemes and in Scotland, Wales and NI, housing is devolved. As discussed above,

while legislation may go some way to meeting international human rights obligations the Human Rights Act 1998 / ECHR does not account for a right to housing as defined in international law. There is therefore a potential gap in the legal structures to ensure that housing law and policy is delivered with reference to international legal standards. Incorporation of an international standard would be one means of ensuring that housing is provided in a human right’s compliant way with examples of this available around the world.

3.6.1 Colombia

The Colombian Constitution incorporates the right to adequate housing (only to Colombian citizens and not more broadly).¹⁰⁷ The nature of the duty is to ‘establish the conditions necessary’ to give effect to this right and to promote plans for public housing, appropriate systems of long-term financing and community plans for the execution of housing programmes (Article 51). The Constitutional Court has judicially reviewed the constitutionality of the provisions establishing the financing of housing programmes and found them unfit for purpose. For example, when creating a fiscal policy to provide housing the court found that the provisions in force made dignified housing unattainable and thus declared the fiscal policy unlawful.¹⁰⁸ The Court also recognised the right to housing of a vulnerable 73-year-old internally displaced woman, who, having requested housing subsidies was given incorrect advice about her housing benefits. Considering the vulnerability of the woman the court declared her right to adequate housing immediately enforceable and noted that the protection of the right to housing includes a duty to provide adequate information and assistance on the procedures.¹⁰⁹

3.6.2 Argentina

In Argentina the Constitution recognises the right to access decent housing (Article 14) as well as incorporating the ICESCR into domestic law (Article 22). Several cases have seen the right to housing enforced through the judiciary with reference to international standards. For example, in *Saavedra* the court referenced UN General Comments 4 and 7 in interpreting the right to housing.¹¹⁰ In *Gianelli*, a trial court declared that if tenants with children were threatened with forced eviction the government authority must assure alternative

housing.¹¹¹ In *Delfino*¹¹² the court considered the conditions of government funded private hostels did not meet habitability conditions and ordered the city administration to adopt measures to provide adequate housing – the courts also imposed fines on public officials for failing to comply with a court agreement that involved ensuring adequate housing conditions of a number of families included in an emergency housing plan.¹¹³

The court in Argentina has also gone so far as to offer structural remedies where the local authority has failed in implementing the right to housing. This has included wide ranging structural remedies for collective cases involving multiple families (like a class action). In *Agüero*, a collective injunction involved 86 families living in irregular conditions on state-owned land.¹¹⁴ Initially the case was settled, and the administration agreed to design a specific housing plan for the families – the administration's failure to comply led to a new injunction and to a court ordered seizure of public monies to secure funding for the promised plan. The administration adopted a plan to build 91 dwellings giving priority in the legal tender to enterprises offering jobs to residents. The administration was to offer residents access to a special line of credit where payments were not to exceed 20% of monthly income.

3.6.3 Canada

In Canada, the Canadian Charter of Rights includes provision for equality (section 15) that has been interpreted to include protection on the grounds of socio-economic status. For example, Irma Sparks was a black woman and single mother of two children – she challenged the exclusion of public housing tenants from security of tenure provisions as a violation of equality rights. Irma had been given a 3 month notice to vacate without reasons. The Nova Scotia court of appeal found that public housing residents were disproportionately single mothers, black and poor, and that their exclusion from provincial residential tenancies legislation constituted adverse effect discrimination on the grounds of race, sex, marital status, and poverty. This is an example of how socio-economic status can constitute a ground for discrimination, and in this case, poverty was considered a personal characteristic which constituted grounds for discrimination.¹¹⁵

3.6.4 European Committee of Social Rights (*FIDH v Ireland*)

In Ireland the constitution protects both enumerated (explicit) and unenumerated (implicit) constitutional rights. Under Article 45 of the Constitution, the directive principles of social policy, although referring to socio-economic duties, are not enforceable in court. Although other mechanisms exist to protect human rights (Human Rights Act 2003; EU law; equality provisions etc.) Ireland does not provide for a right to adequate housing in domestic law other than through domestic legislation that may or may not provide housing in a human right's compatible way. Ireland has signed and ratified the collective complaint mechanism under the European Social Charter and signed and ratified the revised European Social Charter. In 2014, a collective case was taken to the European Committee of Social Rights where the applicants argued that the State was failing to meet its duty to provide adequate housing under the Charter.¹¹⁶ In particular the International Federation for Human Rights ('FIDH' the applicant) argued that Ireland was in violation of the Charter on the grounds that the legal, policy and administrative framework of housing in Ireland was insufficient, that the adequacy, habitability and suitability of some local authority housing was inadequate and the regeneration programmes of the State in key local authority housing estates did not respect the rights set out in the Charter.¹¹⁷ The Committee found by 11 votes to 1 that Ireland had violated the right of the family to social, legal and economic protection (Article 16). The Committee indicated that 'in order to satisfy Article 16, States parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). Adequate housing refers not only to a dwelling, which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore, the obligation to promote and provide housing extends to security from unlawful eviction.'¹¹⁸ The Committee found that direct evidence from tenants, architects and engineers indicated problems with mould, dampness, sewage invasions and thus demonstrated

‘that a number of local authority tenants reside in poor housing conditions amounting to housing that is inadequate in nature.’¹¹⁹

The opportunity for the applicants to take a collective case before the European Committee of Social Rights meant that tenants could group together and argue before the Committee that the State was failing at a structural level and that the problems relating to local authority housing were pervasive and systemic and not limited to individual cases. The UK has not signed the Additional Protocol to the European Social Charter providing for a system of collective complaints meaning that this route to remedy is not currently available. Comparative best practice suggests that facilitating group proceedings is a helpful way of addressing social rights violations because such violations are often collective in nature.¹²⁰ One of the mechanisms through which larger housing issues could be addressed would be to facilitate access to justice under a collective complaint’s mechanism either domestically or supranationally. It should be noted that Ireland continues to suffer from a major housing crisis, and so whilst the collective complaints mechanism has helped draw attention to this at a regional and international level, it has not been sufficient to replicate a domestically enforceable right to adequate housing.

3.7 Conclusion

There is a need across the UK to shift the view from housing as a simple commodity, to housing as a basic human right, central to an adequate standard of living and a person’s dignity. Tragedies such as the fire at Grenfell Tower in London have once again prompted housing inequalities to be a major area of discourse across the UK, but there is little to suggest these discussions will manifest in a move towards a rights-based approach to housing at a UK level. There is a prominent move towards a right to housing within Scotland and Wales, with Scotland continuing down its journey to incorporation of international treaties such as the UNCRC and ICESCR, and Wales actively engaging with the concept of housing as a human right. These are promising signs but are contradicted by reports indicating housing inequalities, homelessness, and insecurity of tenures is worsening without routes to effective remedies available.

This briefing on the right to adequate housing has only been able to touch upon some of these highly important discussions. The briefing highlights the need to address the right to housing accountability gap across the UK’s domestic legal systems. Incorporation is a means through which to address this gap. As the examples from other States provide, there is practice from around the world which can be studied, analysed, and utilised to further entrench the right to adequate housing in the UK.

Endnotes

- 1 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23. Hereinafter General Comment 4; and UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, E/1998/22. Hereinafter General Comment 7.
- 2 General Comment 4 [para.7].
- 3 Human Rights Council Report by Special Rapporteur Leilani Farha, 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (2018) UN Doc A/HRC/37/53.
- 4 Human Rights Council Report by Special Rapporteur Leilani Farha, 'Guidelines for the Implementation of the Right to adequate Housing' (2019) UN Doc A/HRC/43/43.
- 5 Committee on Economic, Social and Cultural Rights, 'Letter from CESCR Chairperson to States Parties in the context of the economic and financial crisis', 16 May 2012.
- 6 General Comment 4 [para.14].
- 7 Ibid [para.17].
- 8 Ibid [para.17].
- 9 Ibid [para.16].
- 10 The 'Seven Towers' project in Belfast brought to light the importance of budgeting for housing strategies. Further information can be found in Ann Blyberg & Helena Hofbauer, 'The Use of Maximum Available Resources' (2014). Available at: <<http://internationalbudget.org/wp-content/uploads/MAR-Expenditures-on-items-that-are-not-effective-for-guaranteeing-rights-booklet.pdf>>
- 11 UN OHCHR, 'Homelessness and human rights'. Available at: <<https://www.ohchr.org/en/issues/housing/pages/homelessnessandhumanrights.asp>>
- 12 See *López Albán v. Spain* Communication No. 37/2018, E/C.12/66/D/37/2018.
- 13 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19, [Para.59(a)].
- 14 General Comment 4 [para.13].
- 15 General Comment 7.
- 16 General Comment 4 [para.13]. See also Economic and Social Council, 'Revised General Guidelines Regarding the Form and Contents of Reports to be Submitted by States under Article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights' (1991) UN Doc E/C.12/1991/1, 17 June 1991.
- 17 Ibid.
- 18 General Comment 4 [para.11].
- 19 See Northern Ireland Act 1998, s.6(1)(c) (legislative competence); s.24(1)(c) (Ministerial competence); s.83 (interpretation of Acts of the Assembly).
- 20 See Government of Wales Act s.81(1) (Ministerial competence); s.94(6)(c) (legislative competence); s.154 (interpretation of Acts of the Assembly).
- 21 *Connors v. UK*, (European Court of Human Rights, Application no. 66746/01, 27 May 2004), [para.95]. The Court noted that, 'the eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a 'pressing social need' or proportionate to the legitimate aim being pursued. There has, accordingly, been a violation of Article 8 of the Convention.'
- 22 *Yordanova and Others v Bulgaria*, Application no. 25446/06, 12 April 2012.
- 23 *Dakus V. Ukraine - 19957/07* (Judgment: Violation of - Right to respect for private and family life (-1 - Respect for home)) (2017) ECHR 1145 (14 December 2017), [para.47].
- 24 Held: it was not demonstrated that it was necessary in a democratic society in this case and so the eviction order was unlawful.
- 25 The ECtHR referenced 'relevant international material' including the European Social Charter; a decision of the European Committee of Social Rights (*European Roma Rights Centre v Bulgaria* Complaint No 31/2005, 25 May 2005); General Comment 4; General Comment 7.
- 26 *Yordanova and Others v Bulgaria*, Application no. 25446/06, 12 April 2012, [para.83].
- 27 Adélaïde Remiche, 'Yordanova and Others v Bulgaria: The Influence of the Social Right to Adequate Housing on the Interpretation of the Civil Right to Respect for One's Home' (2012) 12 Human Rights Law Review 787.
- 28 *Manchester City Council v Pinnock* [2011] 2 AC 104; *Hounslow London Borough Council v Powell* (2011) 2 AC 186.
- 29 See for example: *South Lanarkshire Council v McKenna* (2012) CS1H 78: duty to give reasons for eviction; *River Clyde Homes Ltd v. Woods, Greenock Sheriff Court*, 15th April (2015 House LR 33) tenant allowed to challenge veracity of reasons for eviction; *McDonald v McDonald & Ors* (2016) UKSC 28 Art. 8 does not impose duty on private landlord.
- 30 *Mitchell (AP) v Glasgow City Council* [2009] UKHL 11; (2009) WLR (D) 65 [para 69].
- 31 Human Rights Council Report of the Special Rapporteur Raquel Rolnik, on 'adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (2013) UN Doc A/HRC/25/54/Add.2.
- 32 See the UK Common Core Document, HRI/CORE/GBR/2014 and UN CESCR, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc E/C.12/GBR/CO/6, 14 July 2016, (CESCR 2016) [para.122-123]. Hereinafter CESCR 2016 E/C.12/GBR/CO/6.
- 33 CESCR 2016 E/C.12/GBR/CO/6 [para.49].
- 34 Ibid.
- 35 Ibid [para.51].
- 36 UN CESCR, Concluding Observations: United Kingdom, 12 June 2009, (CESCR 2009) UN Doc. E/C.12/GBR/CO/5.
- 37 Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 3 June 2016 UN Doc CRC/C/GBR/CO/5 (CRC, 2016), [para.71(e)].
- 38 CESCR 2016 E/C.12/GBR/CO/6 [para 50].
- 39 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Visit to the United Kingdom of Great Britain and Northern Ireland, 27 May 2019 A/HRC/41/54/Add.2 [para.22].
- 40 Ibid.
- 41 Ibid.
- 42 National Audit Office, *Homelessness*, 13 September 2017, p. 14; and Ministry of Housing, Communities and Local Government, *Rough Sleeping Statistics, Autumn 2018, England (Revised)*, 25 February 2019.
- 43 See Patrick Butler, 'At least 320,000 homeless people in Britain, says Shelter' 22 November 2018, *The Guardian*; Shelters Press Release is available at: <https://england.shelter.org.uk/media/press_release/320,000_people_in_britain_are_now_homeless,_as_numbers_keep_rising>
- 44 See Crisis Press Release 'More than 24,000 people facing Christmas sleeping rough or in cars, trains, buses, and tents' 14 December 2018, Crisis. Available at: <www.crisis.org.uk/about-us/latest-news/more-than-24-000-people-facing-christmas-sleeping-rough-or-in-cars-trains-buses-and-tents/>
- 45 Office of National Statistics, 'Deaths of homeless people in England and Wales: 2013 to 2017', 20 December 2018.
- 46 [paras 22 & 36]; Angel Strachan, 'building more affordable homes' Shelter briefing, 19 October 2018.
- 47 Report of the Special Rapporteur on extreme poverty and human rights, Visit to the United Kingdom of Great Britain and Northern Ireland, A/HRC/41/39/Add.1, 23 April 2019, [paras 22 & 36].
- 48 Joseph Rowntree Foundation, *UK Poverty 2018*, pp. 25 and 39.
- 49 2017 Budget speech.
- 50 Report of the Special Rapporteur on extreme poverty and human rights, Visit to the United Kingdom of Great Britain and Northern Ireland, A/HRC/41/39/Add.1, 23 April 2019, para.36
- 51 Katie Boyle et al, *The Practitioner Perspective on Access to Justice for Social Rights: Addressing the Accountability Gap* (2022).
- 52 Katie Boyle, *Economic and Social Rights Law, Incorporation, Justiciability and Principles of Adjudication* (2020) Routledge [p.181].
- 53 Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) Faculty Scholarship Series (1961) Paper 839.
- 54 Jeff King, *Judging Social Rights* (CUP 2011) [pp.41-57].
- 55 Katie Boyle, Models of Incorporation and Justiciability of Economic, Social and Cultural Rights, Scottish Human Rights Commission, (2018) [p.14]; See also UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19. [Para.77-80]; UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147. See also UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: The domestic application of the Covenant, 3 December 1998, E/C.12/1998/24, [para.4].
- 56 Treaty bodies recommending incorporation: CEDAW/C/UK/CO/6 (CEDAW, 2009) Committee on the Elimination of Discrimination against Women; CAT/C/GBR/CO/5 (CAT, 2013) Committee against Torture; CRC/C/GBR/CO/4 (CRC, 2008) Committee on the Rights of the Child. Treaty bodies recommending justiciable enforcement and effective remedies: CRC/C/GBR/CO/5 (CRC, 2016) Committee on the Rights of the Child; E/C.12/GBR/CO/5 (CESCR, 2009) Committee on Economic, Social and Cultural Rights; E/C.12/GBR/CO/6 (CESCR, 2016) Committee on Economic, Social and Cultural Rights.
- 57 UN General Comment No. 5: General Measures of Implementation for the Convention on the Rights of the child, (2003), CRC/GC/2003/5, para 20; Concluding Observations of the United Nations Committee on the Rights of the Child on the United Kingdom (2002), CRC/C/15/Add.188, paras 8 and 9 and Concluding Observations of the United Nations Committee on the Rights of the Child on the United Kingdom (2008), CRC/C/GBR/CO/4, para 7; CAT/C/GBR/CO/5 (CAT, 2013) Committee against Torture, para.7; CEDAW/C/UK/CO/6 (CEDAW, 2009) Committee on the Elimination of Discrimination against Women; E/C.12/GBR/CO/5 (CESCR, 2009) Committee on Economic, Social and Cultural Rights para.13

- 58 E/C.12/GBR/CO/6 (CESCR, 2016) Committee on Economic, Social and Cultural Rights, para.5; CRC/C/GBR/CO/5 (CRC, 2016) Committee on the Rights of the Child [para.7].
- 59 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: The domestic application of the Covenant, 3 December 1998, E/C.12/1998/24, para.10; E/C.12/GBR/CO/5 (CESCR, 2009) Committee on Economic, Social and Cultural Rights [para.13].
- 60 General Comment No. 9, *Ibid.*
- 61 CESCR 2016 E/C.12/GBR/CO/6 [para.50].
- 62 Report of the Special Rapporteur on extreme poverty and human rights, Visit to the United Kingdom of Great Britain and Northern Ireland, A/HRC/41/39/Add.1, 23 April 2019, para.96
- 63 Under paragraph 3 of Schedule 2 of the Northern Ireland Act 1998 International relations, including relations with territories outside the UK, the European Communities (and their institutions) and other international organisations and extradition, and international development assistance and co-operation are excepted matters (i.e. beyond the legislative competence of the NI Assembly). However, an exemption to this excepted matter is the competence to observe and implement international obligations, obligations under the Human Rights Convention and obligations under Community law. Under Section 98 of the NI Act ‘international obligations’ are defined as ‘any international obligations of the UK other than obligations to observe and implement Community law or the Convention rights.’ Similar conditions apply in Wales and Scotland. Schedule 7A para.10(3)(a) Government of Wales Act 2006 exempts ‘observing and implementing international obligations’ from reserved matter of international relations and foreign affairs. Schedule 5 para.7(2)(a) of Scotland Act 1998 exempts ‘observing and implementing international obligations’ from foreign affairs reservation.
- 64 First Minister’s Advisory Group on Human Rights Leadership (Edinburgh, 2018). Available here: <<https://humanrightleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>>
- 65 National Taskforce for Human Rights Leadership Report (Edinburgh 2021). Available at <<https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/documents/>>
- 66 Welsh Senedd ‘Where next for human rights in Wales?’ 10 December 2021. Available at: <<https://research.senedd.wales/research-articles/where-next-for-human-rights-in-wales/>>; See also Simon Hoffman, Sarah Nason, Rosie Beacock, & Ele Hicks (with contribution from Rhian Croke) ‘Strengthening and advancing equality and human rights in Wales’ (2021) Welsh Government Social Research Number 54/2021.
- 67 Removing provisions relating to the UK Parliament and UK Ministers.
- 68 Northern Ireland Human Rights Commission, Bill of Rights for Northern Ireland, Advice for the Secretary of State (2008). Available at: <<http://www.nihrc.org/uploads/publications/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>> at 170>
- 69 Scotland Act 1998 Schedule 5 para.7(2)(a)
- 70 UN CESCR, Concluding Observations: United Kingdom, 12 June 2009, (CESCR 2009) UN Doc. E/C.12/GBR/CO/5 [para.29].
- 71 Rights of Children and Young Persons (Wales) Measure 2011.
- 72 Wellbeing of Future Generations (Wales) Act 2015, Part 2.
- 73 Shelter Cymru, ‘Homelessness – the law in Wales’ (2019) Shelter Cymru. Available at: <<https://www.lawworks.org.uk/sites/default/files/files/An-Intro-to-Homlessness-Housing-%28Wales%29-Act-Part-2-Delegates-notes-Jan2019.pdf>>
- 74 Housing (Wales) Act 2014, S 62.
- 75 Equality and Human Rights Commission, ‘Is Wales Fairer? The state of equality and human rights in 2018’ (2018) ECHR <<https://www.equalityhumanrights.com/sites/default/files/is-britain-fairer-2018-is-wales-fairer.pdf>>.
- 76 *Ibid* [47-50].
- 77 *Ibid* [pp.52-57].
- 78 Shelter Cymru, ‘Trapped on the Streets’ (2018) Shelter Cymru. Available at: <<https://sheltercymru.org.uk/wp-content/uploads/2018/09/Trapped-on-the-Streets-Full-Report.pdf>>; See also, Shelter Cymru, ‘Response to Welsh Government consultation: Review of affordable housing supply in Wales’ (2018) Shelter. Available at: <<https://sheltercymru.org.uk/wp-content/uploads/2018/09/Affordability-of-social-housing-review-final.pdf>>
- 79 Simon Hoffman, ‘The right to adequate housing in Wales: Feasibility Report’ (2019) Tai Pawb & Shelter Cymru .
- 80 *Ibid* [23].
- 81 Northern Ireland Act 1998 s.75.
- 82 Alison Wallace, ‘Housing Communities’ Inequalities in Northern Ireland’ (2015) Centre for Housing Policy.
- 83 *Ibid.*
- 84 CESCR 2016 E/C.12/GBR/CO/6.
- 85 *Ibid.*
- 86 Northern Ireland Human Rights Commission, ‘Out of Sight, Out of Mind: Travellers’ Accommodation in Northern Ireland’ (2018) NIHRC.
- 87 *Ibid* [Forward].
- 88 Sinn Fein, ‘The Right to Housing: Improving the level and location of social housing’ (2019) Sinn Fein. Available at: <https://www.sinnfein.ie/files/2019/Sinn_Fe%CC%81in_-_The_Right_to_Housing1.pdf>
- 89 *Ibid* [p.3]
- 90 Simon Community, ‘Homelessness in NI’. Available at: <<https://simoncommunity.org/homelessness/knowledge-hub/homelessness-in-ni>>.
- 91 The Housing (Northern Ireland) Order 1983.
- 92 The Housing (Northern Ireland) Order 1988.
- 93 The Housing (Northern Ireland) Order 2003.
- 94 Mira Dutschke et al, ‘Budgeting for Social Housing in Northern Ireland: A Human Rights Analysis’ (2011) Queen’s University Belfast.
- 95 Northern Ireland Human Rights Commission, Bill of Rights for Northern Ireland, Advice for the Secretary of State (2008). Available at: <<http://www.nihrc.org/uploads/publications/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>> at 170>
- 96 Northern Ireland Executive, *New Decade, New Approach* (January 2021). Available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf>
- 97 Article 23 Constitution of Belgium 1831 (rev. 2014).
- 98 Section 19 Constitution of Finland 1999 (rev. 2011).
- 99 Article 2 Constitution of Sweden 1974 (rev. 2012).
- 100 Article 41 and Article 148 Constitution of Switzerland 1999 (rev. 2014).
- 101 Section 47 Constitution of Spain 1978 (rev. 2011).
- 102 Article 47 Constitution of Ukraine 1996 (rev. 2014).
- 103 Article 65 Constitution of Portugal 1976 (rev. 2005).
- 104 Article 75 Poland 1997 (rev. 2009).
- 105 Article 22 Netherlands 1815 (rev. 2008).
- 106 The following 71 states provide for some form of the right to shelter in their constitutions: Albania 1998 (rev. 2016); Algeria 1989 (reinst. 1996, rev. 2016); Andorra 1993; Angola 2010; Argentina 1853 (reinst. 1983, rev. 1994); Azerbaijan 1995 (rev. 2016); Bangladesh 1972 (reinst. 1986, rev. 2014); Belarus 1994 (rev. 2004); Belgium 1831 (rev. 2014); Bolivia (Plurinational State of) 2009; Brazil 1988 (rev. 2017); Burkina Faso 1991 (rev. 2012); Cape Verde 1980 (rev. 1992); Colombia 1991 (rev. 2015); Congo (Democratic Republic of the) 2005 (rev. 2011); Costa Rica 1949 (rev. 2011); Côte d’Ivoire 2016; Cuba 1976 (rev. 2002); Dominican Republic 2015; Ecuador 2008 (rev. 2015); Egypt 2014; El Salvador 1983 (rev. 2014); Ethiopia 1994; Fiji 2013; Finland 1999 (rev. 2011); Gambia (The) 1996 (rev. 2004); Germany 1949 (rev. 2014); Greece 1975 (rev. 2008); Guatemala 1985 (rev. 1993); Guyana 1980 (rev. 2016); Haiti 1987 (rev. 2012); Honduras 1982 (rev. 2013); Hungary 2011 (rev. 2016); Iran (Islamic Republic of) 1979 (rev. 1989); Iraq 2005; Kazakhstan 1995 (rev. 2011); Kenya 2010; Kyrgyzstan 2010; Madagascar 2010; Maldives 2008; Mali 1992; Mexico 1917 (rev. 2015); Moldova (Republic of) 1994 (rev. 2016); Morocco 2011; Mozambique 2004 (rev. 2007); Nepal 2015 (rev. 2016); Nicaragua 1987 (rev. 2014); Niger 2010; Nigeria 1999 (rev. 2011); Panama 1972 (rev. 2004); Paraguay 1992 (rev. 2011); Poland 1997 (rev. 2009); Portugal 1976 (rev. 2005); Russian Federation 1993 (rev. 2014); Sao Tome and Principe 1975 (rev. 1990); Seychelles 1993 (rev. 2017); Slovenia 1991 (rev. 2013); South Africa 1996 (rev. 2012); South Sudan 2011 (rev. 2013); Spain 1978 (rev. 2011); Sri Lanka 1978 (rev. 2015); Sweden 1974 (rev. 2012); Switzerland 1999 (rev. 2014); Tajikistan 1994 (rev. 2003); Timor-Leste 2002; Turkey 1982 (rev. 2011); Turkmenistan 2008; Uganda 1995 (rev. 2005); Ukraine 1996 (rev. 2014); Uruguay 1966 (reinst. 1985, rev. 2004); Venezuela (Bolivarian Republic of) 1999 (rev. 2009); Viet Nam 1992 (rev. 2013); Zambia 1991 (rev. 2009); Zimbabwe 2013.
- 107 Article 51 Colombia 1991 (rev. 2015)
- 108 Magdalena Sepúlveda, ‘Colombia, The Constitutional Court’s Role in Addressing Social Injustice’, in M. Langford (eds) *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (2012) Cambridge University press [p.152].
- 109 T602-03.
- 110 Buenos Aires Supreme Court, Comisión Municipal de la Vivienda v Saavedra, Felisa Alicia y otros s/Desalojo s/Recurso de Inconstitucionalidad Concedido 7 October 2002.
- 111 Buenos Aires Administrative Trial Court No.3 Comisión Municipal de la Vivienda v Gianelli, Alberto Luis y otros s/Desalojo 12 September 2002
- 112 Buenos Aires Administrative Court of Appeals, Chamber I, Delfino, Jorge Alberto y otros v GCBA s/amparo 11 June 2004.
- 113 Buenos Aires Administrative Appellate Court, Chamber II, Ramallo, Beatriz v Ciudad de Buenos Aires, 30 September 2004.
- 114 Buenos Aires Administrative Trial Court No.5 *Aguiero, Aurelio E. v GCBA S/ AMPARO*, friendly settlement, Dec 2003.
- 115 *Sparks v Dartmouth/ Halifax County Regional Housing Authority* (1993) 119 NSR (2D) 91 (NS CA).
- 116 Ireland has not agreed to be bound by Article 31 (the right to adequate housing) but housing is protected under a number of other Articles: 11 (The right to protection of health), 16 (The right of the family to social, legal and economic protection), 17(The right of children and young persons to social, legal and economic protection), 30 (The right to protection against poverty and social exclusion).
- 117 *International Federation for Human rights (FIDH) v. Ireland*, Collective Complaint n° 110/2014, 23 October 2017.
- 118 *Ibid* [Para.106].
- 119 *Ibid* [Para.121].
- 120 David Landau, ‘The Reality of Social Rights Enforcement’ (2012) 53 *Harvard International Law Journal* 189

The Access to Justice for Social Rights: Addressing the Accountability Gap project explores the barriers faced by rights holders in accessing justice for violations of social rights across the UK. The project seeks to better understand the existing gaps between social rights in international human rights law, and the practice, policy and legal frameworks across the UK at the domestic level. It aims to propose substantive legal solutions – embedding good practice early on in decision making as well as proposing new legal structures and developing our understanding of effective remedies (proposing substantive change to the conception of ‘justice’ as well as the means of accessing it).

Written by:

Katie Boyle & Aidan Flegg

Organisation details

Dr Katie Boyle | katie.boyle@stir.ac.uk

www.stir.ac.uk/about/faculties/arts-humanities/law-and-philosophy/law-research/human-rights/access-to-justice-for-social-rights/

Published May 2022, © Katie Boyle

Documents in this series:

1. The Practitioner Perspective on Access to Justice for Social Rights: Addressing the Accountability Gap
2. Briefing - ESC Rights Part One : International Legal Obligations - An Explainer
3. Briefing - ESC Rights Part Two: The Right to Social Security in the UK - An Explainer
4. Briefing - ESC Rights Part Three: The Right to Adequate Housing in the UK - An Explainer
5. Briefing - ESC Rights Part Four: The Right to Food in the UK- An Explainer
6. Briefing: Thematic Analysis on Access to Justice for Social Rights: An Explainer
7. Briefing: A Comparative Study of Legal Aid and the Social Rights Gap
8. Briefing: Effective Remedies & Structural Orders for Social Rights Violations
9. Briefing: Legal and Discursive Interdisciplinary Approach to Social Rights in the UK
10. Briefing: The Access to Justice Journey

