

Welsh Parliament: Local Government and Housing Committee Consultation: The right to adequate housing Response by Just Fair

March 2023

Introduction

Just Fair¹ is a UK charity that is working to realise a fairer and more just society by monitoring and advocating for economic, social, and cultural rights (ESCR) in the UK.

We welcome this opportunity to respond to the consultation by the Local Government and Housing Committee into the right to adequate housing.

Just Fair supports the [Back the Bill](#) campaign in Wales, a coalition made up of partners Tai Pawb, Shelter Cymru and the Chartered Institute of Housing Cymru, campaigning to incorporate into Welsh law the right to adequate housing for all.

We also commend these groups on the ground-breaking [independent research](#) on a cost-benefit analysis of the right to adequate housing in Wales. This research shows the potential of a domestically enforceable right to housing to transform many aspects of people's lives in Wales.

Because our rights are interdependent, proper protection of the right to housing will positively impact on other rights, such as mental and physical health, education, and work.

In addition to our support for the work of these groups, we wish to make 2 key points in our submission:

- 1. Our evidence illustrates that the right to adequate housing is being violated in several ways across Britain, including in Wales. The introduction of the right to adequate housing represents a practical, long-term solution to many of the problems caused by the violation of this right.**
- 2. At least 65 countries across the globe already have enforceable economic, social, and cultural right in their constitutions. There is no 'one size fits all model', rather it is for Wales to decide how best to give effect to international human rights obligations in its specific constitutional context.**

The impact a right to adequate housing would make across Welsh housing policy.

In January 2023 Just Fair submitted an independent parallel report to the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) on behalf of civil society in England and Wales.² This report was evidence led and countersigned by 48 civil society organisations and endorsed by 12 more.

The report painted a distressing picture in relation to the realisation of economic, social, and cultural rights across England and Wales. However, it is this distressing picture that makes the need for a domestically enforceable right to adequate housing all the more immediate.

¹ <https://justfair.org.uk/>

² Available in [English](#) and [Welsh](#).

In relation to the right to adequate housing (a component of the article 11 right to an adequate standard of living) our report noted:

1. The right to an adequate standard of living is not satisfied in the UK. Further, rather than *continuous improvement* (art.11.1), a decline in living conditions is being experienced. It is estimated that one in five or 14.5 million people are in poverty ([SUB 22](#), p. 8). Repeated concerns are raised in the submitted evidence about significant hardship, poverty, and destitution being experienced in the UK relating in particular to adequate housing, food, and clothing as well as fuel poverty and digital exclusion. The State Party has not adopted all necessary measures to address the housing deficit, nor has it taken specific measures to address issues of affordability and effective regulation in the Private Rental Sector (PRS).
2. **The incorporation of the right to adequate housing into domestic law would be an important step which can be taken by the UK and Welsh Governments.** Campaigning groups have highlighted how introducing a right to adequate housing into domestic law in Wales would generate significant savings worth £11.5bn against overall costs of £5bn over a 30-year period. It is projected that those benefits could start to outweigh costs after just six years from improved well-being, local council budgets, health savings for the NHS, the criminal justice system, and in generated additional economic activity ([SUB 45 and Tai Pawb](#)).
3. The private rental sector in Wales has grown significantly over the past decade. Between 2011 and 2021 the number of households living in the private rental sector grew to over 228,000 an increase of over 44,000 on 2011. By 2021 17% of Welsh households were living in the private rental sector, up from 14.1%.³ In our report to the UNCESCR, it was highlighted that the use of the private rental sector (PRS) to meet public housing needs and address homelessness is inadequate in terms of securing the right to adequate housing and leads to increasing numbers of individuals unable to secure adequate housing and improve their living conditions. In particular:
 - a. There is a lack of adequate controls on landlords meaning that there is a lack of repairs to properties ([SUB 40](#), p. 2). For example, evidence suggests that 28.2% of properties in the PRS in the North East of England were deemed non-decent in 2020, an increase of 3.6% since 2010 ([SUB 14](#), p. 3).
 - b. The lack of adequate controls also leads to unfair and unrestrained use of evictions. There are calls for no-fault evictions to be banned as their increased use is forcing people into homelessness. Despite pledging to end no fault evictions there is no formal timeline ([SUB 29](#), p. 4).
 - c. There is a need for a system which seeks to rapidly rehouse people who are homeless and prevent homelessness in the first place ([SUB 29](#), p.2).
4. There is a lack of adequate affordable housing and inadequate support to meet unregulated rental costs in the PRS. The operation of housing benefit freezes and caps contributes to problems identified, specifically:
 - a. Local Housing Allowance (LHA) is the rate used to calculate how much support low-income private renters are entitled to as part of their benefits. LHA is non-devolved and so is the responsibility of the Department for Works and Pensions. LHA severely compromises the extent to which the PRS can meet the needs of people experiencing homelessness because LHA has been frozen for a number of years and has not risen in line with PRS

³ The Bevan Foundation, "The onward march of Wales' private rental sector," <https://www.bevanfoundation.org/views/growth-private-rental/>

rents or inflation. There is a significant disconnect between LHA levels and affordable PRS accommodation that can meet the actual housing needs of those requiring accommodation. For people who are destitute or of low-income, the consequences of this disconnect can be significant as unaffordable accommodation raises the risk of further poverty ([SUB 35](#), p. 2).

- b. Other consequences include overcrowding and accommodation in a poor state of repair ([SUB 40](#), p. 2) which impacts other rights such as health and education.
5. Families experiencing homelessness are left in temporary accommodation for long periods of time and this can be further aggravated by the impact of NRPF policy. In particular, temporary accommodation placements are increasing in Wales, with a reported rise of 24% between 2016 and 2020 ([SUB 29](#), p.5). There are less reported difficulties in Wales in relation to securing social tenancies for homeless households, difficulties which exist are linked to the availability of housing supply rather than provider reluctance to assist which is not always the case in England ([SUB 29](#), p.6). It is noted that in response to the lack of social housing, the Welsh Government has made increasing supply of social housing a greater priority and has set an annual target of 3,500 affordable homes for each of 5 years from 2019/20 ([SUB 29](#), p.4).
 - a. The shortage of genuinely affordable housing or social housing leaves people in temporary accommodation for long periods of time. This accommodation comes in a variety of forms, such as houses, flats, hotels, hostels, converted offices, warehouses, or shipping containers, and is often in poor condition, with habitability concerns. Evidence indicates that according to the State Party's own statistics, the most common length of time for households with children to be in temporary accommodation was two to five years and over a fifth of households with children in temporary accommodation remained there for over 5 years ([SUB 29](#), p.5).
 - b. There is a lack of adequate standards for temporary accommodation to define habitability so that people are able to live with dignity and in safety ([SUB 33](#), p. 5).
 - c. Individuals subject to NRPF are excluded from statutory homelessness assistance and local authority social housing allocation. This leaves families destitute and at high risk of exploitation, for instance, 24% of families surveyed by Project 17 were left street homeless by a local authority ([SUB 11](#), p. 3).
 - d. NRPF policy also results in families living in poor housing conditions, without enough space or privacy often far from schools, friends and support networks ([SUB 11](#), p. 3).
6. Access to the right to adequate housing is further compounded by additional inequality factors including:
 - a. Gentrification disproportionately impacts racially minoritised individuals and families ([SUB 37](#), p. 1) and those experiencing economic disadvantage ([SUB 13](#), p. 1). Overcrowding is an issue which disproportionately affects racially minoritised people who are four times more likely to experience overcrowding with knock on effects for health. Racially minoritised people face barriers regarding security of housing including experiences of eviction (actual, threatened, or feared) ([SUB 37](#), p. 2-3).
 - b. People with severe learning disabilities experience difficulties accessing information and support regarding suitable housing and there is a shortage of such housing to meet their needs. This impacts on people's independence and delays discharge from inpatient units ([SUB 34](#), p. 5-6).
 - c. A right to rent policy which requires proof of documented immigration status permitting residence in the UK means that those with insecure immigration status face barriers to accessing housing and some ethnic minorities, including those with settled status

experience discrimination from landlords seeking to avoid fines ([SUB 18.a](#), p. 10).

- d. Young people in the social care system receive inadequate support and there is a failure to take into account the additional risks of rights violations that they encounter. Young people aged 16 and 17 years who are homeless are not accommodated by default under the more supportive provisions of s20 of the [Children's Act 1989](#) and instead, are increasingly accommodated under the [Housing Act 1996](#) or s17 of the Children's Act 1989 which is a lower-cost alternative for local authorities. This leaves them at risk of further homelessness once they turn 18. Care leavers who leave accommodation where they feel unsafe, it is unsuitable, are in arrears or evicted, or become homeless as a result of being in prison are deemed intentionally homeless (and thus not owed a duty by the local authority) despite guidance that this should be avoided ([SUB 19](#), p. 1-3).
 - e. LGBT+ people are experiencing a homelessness crisis –24% of young people experiencing homelessness identify as LGBT+ ([AKT](#)).
7. Evidence indicates that the accessibility of culturally appropriate housing for Gypsy and Traveller people persists as an inadequately addressed issue. In particular:
- a. The figure provided by the State Party (SPR, para. 118) regarding increased provision of accommodation fails to provide information on permanent socially-rented pitch provision. This fell by 11.1% between January 2010 and January 2020 leading to an overall reduction in provision of 8.4%. Although there was an increase in transit pitches of 40%, this in real terms translates to an increase of 101 transit pitches over 10 years. In the same period there was a decrease of 516 permanent pitches. The January 2022 Caravan Count recorded 2,893 caravans with no place to stop, and therefore defining these households as statutorily homeless ([SUB 24](#), p. 3-4).
 - b. Similar concerns regarding the selective nature of data use and gathering relates to the planning definition of Gypsies and Travellers in 2015. People who ceased to travel for any reason (including being disabled, having an illness, or, caring responsibilities, old age) are no longer counted as needing a Traveller pitch in the assessment of accommodation need. This revised definition reduced the requirement for 1,584 further pitches to 345 leaving people without access to appropriate accommodation ([SUB 24](#), p. 4-5). This definition was recently held to be unlawful by the Court of Appeal on the basis it is discriminatory and could not be justified ([Friends, Families & Travellers & Smith v Secretary of State for Levelling Up, Housing & Communities & Ors \[2022\] EWCA Civ 1391](#)).
 - c. A direct threat to the nomadic way of life and the cultural practices of Gypsy and Traveller people is posed by legislation which criminalises Gypsy and Traveller families with no place to stop ([SUB 24](#), p. 5).
 - d. In Wales the issue of adequate and appropriate provision is also of concern and specifically for 146 caravans (there maybe seven or eight people living in a caravan) living on patches of land across Wales that are not official sites and with little or no access to mains electricity, sanitation, washing facilities, refuse and recycling or running drinking water. Sites are often located on the periphery with little to no access to public services and amenities. This is despite a Gypsy [and] Traveller Accommodation Needs Assessment survey carried out by local authorities in 2021 revealing a need for 160 pitches in Wales ([SUB 21](#), p. 1-2).
 - e. Provision which does exist for Gypsies and Travellers in Wales is overcrowded, in unpleasant locations and has often been designed without the involvement of the Gypsy and Traveller communities and so is not culturally appropriate. Nor does it take into account the diversity of culture and needs within Gypsy and Traveller communities ([SUB](#)

[21](#), p. 3).

- f. The lack of transit pitches or negotiated stopping places provided by local authorities in Wales negatively impacts on people's rights as the ability to travel, particularly seasonally, is an important expression of culture and heritage which cannot be realised. ([SUB 21](#), p. 2).
- g. A lack of suitable provision can lead to people living in bricks and mortar accommodation despite a desire not to. Evidence received highlights that this can be a source of isolation, social anxiety and a disconnection from community and heritage with people also experiencing identity based discrimination ([SUB 21](#), p. 3-4).

How incorporating the right to adequate housing into Welsh law would work in practice.

We recommend the Committee examine the work the Back the Bill campaign have already undertaken on this area as a starting point.

Our knowledge and learning from the incorporation of economic and social rights (ESCR) across the globe teaches us that what incorporation looks like is very much a decision for the people of Wales, there is no 'one size fits all' model, but rather it can be tailored to your particular needs and parameters. As noted by Just Fair's Trustee, Dr Katie Boyle,

"The 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. This incorporation can take many different forms... Ultimately it is for each state to decide how best to give effect to international human rights obligations in its specific constitutional context. Incorporation and justiciability of ESC rights is not a new phenomenon. It has occurred across the globe in different ways."

Indeed by 2018, 65 countries globally had enshrined economic, social and cultural rights in their constitutions, including 12 in Europe.⁴

Some examples are included below, but we recommend the Committee consult our further reading list for more information.

Argentina

The Argentinian constitution was amended in 1994 and ICESCR was explicitly incorporated. They follow a 'Rights affirmative' constitutional framework, where the compliance with international human rights and constitutional rights is the default position. There is an option for parliamentary derogation if two thirds of each chamber of the parliament approve. In addition to the national level, a number of changes at the provincial level have occurred, with individual states adopting constitutional amendments with better protection for ESC rights.

This system has resulted in a strong ESCR outcome.

Finland

⁴ [Models of Incorporation and Justiciability for Economic, Social and Cultural Rights](#). Authored by Dr Katie Boyle for the Scottish Human Rights Commission, November 2018

The rights in the constitution are all required to be given effect to through subsequent legislation – so the mandate (and obligation) to fulfil them rests with legislature. There is a Constitutional Committee which scrutinises legislation for ESCR compliance pre-enactment (and by convention parliament complies with this review). If the legislature fails to meet its constitutional obligations the court can intervene (as matter of last resort). In Sweden a similar pre-enactment review process is in place.

It is argued that that this type of ‘ex ante review’ of legislation through the Parliamentary system makes it difficult (although not impossible) to legislate in a way that infringes fundamental rights, however, the UN Committee on Economic, Social and Cultural Rights has raised concerns that model does not adequately facilitate access to justiciable remedies for violations of ESCR.

This system has resulted in a strong ESCR outcome.

Colombia

The Colombian constitution divides human rights into three groups: fundamental rights, ESC rights, and collective and environmental rights. It also places international treaties on a domestic constitutional footing and protects vulnerable and disadvantaged groups within society with particular measures for children, women, older people and disabled people.

Responsibility for safeguarding the Constitution is assigned to the Constitutional Court and the main mechanism for the judicial protection under the constitution is the tutela device, which enables a person to file a writ of protection before any court or tribunal for the immediate protection of her or his ‘fundamental constitutional rights.’

Magistrates in the Constitutional Court can review tutelas, and where appropriate, will group cases together in order to address structural problems, such as for example, if an issue emerges that applies to a large group of vulnerable people the cases will be merged together and the court will issue a collective remedy.

This system has resulted in a strong ESCR outcome.

Germany

In Germany, constitutional rights do not include all economic and social rights, however the constitution does provide for a right to dignity (Article 1.1 Basic Law) that the court has interpreted as constituting minimum standards (existenzminimum) across particular social rights.

In addition, German governance responsibilities are divided between the federal level (Bund) and the devolved level (Länder) including compliance with human rights obligations.

This system has resulted in a moderate ESCR outcome.

South Africa

In South Africa, ESCR enjoy a mixture of substantive rights recognition, together with safeguards and limitation clauses contained in the Constitution. Rights are also afforded protection to different degrees along the respect, protect, promote, fulfil axis.

Some ‘negative’ rights enjoy immediate protection such as the right not to be evicted without fair procedure and some rights are afforded non-derogable status, such as rights relating to children.

Other rights are considered to be subject to progressive realisation such as the right to access adequate housing and the right to access health care, food, water and social security.

There is a general limitation clause under section 36 of the South African constitution, whereby rights may be limited if reasonable and justifiable in an open and democratic society.

The South African Constitutional Court has adjudicated upon and enforced ESC rights employing a 'reasonableness' review in assessing state compliance.

This system has resulted in a moderate ESCR outcome.

Conclusion

As illustrated above there is a strong need and a clear case for the right to adequate housing to be brought into Welsh law. Exactly what form this takes is something for the Committee and the people of Wales to discuss. Many models already exist that can be examined in terms of merits and demerits.

Further reading

[Models of Incorporation and Justiciability for Economic, Social and Cultural Rights](#), authored by Dr Katie Boyle for the Scottish Human Rights Commission, November 2018

[Economic and Social Rights in Northern Ireland: Models of Enforceability](#), authored by Christopher McCrudden, Katie Boyle, Brice Dickson, Colin Harvey, Kathryn McNeilly and Luke Moffett, November 2020

[A Bill of Rights for Northern Ireland Advice to the Secretary of State for Northern Ireland](#), Northern Ireland Human Rights Commission, December 2008

[General Comment No. 9: The domestic application of the Covenant](#), Committee on Economic, Social and Cultural Rights, December 1998

[A Bill of Rights for the UK?](#) Joint Committee on Human Rights, July 2008

Further information and contact

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