

<b>Institution:</b> University of Stirling		
<b>Unit of Assessment:</b> 18. Law		
<b>Title of case study:</b> Making Rights Real: shaping laws to make human rights enforceable		
<b>Period when the underpinning research was undertaken:</b> Aug 2018-Dec 2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Katie Boyle	Associate Professor	01 Aug 2018-current
<b>Period when the claimed impact occurred:</b> Aug 2018-Dec 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<b>1. Summary of the impact</b>		
<p>Despite being party to international Conventions on economic, social, and cultural human rights (ESCR), the United Kingdom has failed to make these rights real by embedding them into domestic law. Boyle's research has <b>underpinned major processes within Scotland</b> that are reversing this accountability gap in devolved areas. Her work has specifically:</p> <p><b>Impact 1:</b> Given key bodies, such as Together (the Scottish Alliance for Children's Rights), the expert knowledge needed to carry forward the ESCR incorporation agenda.</p> <p><b>Impact 2:</b> Underpinned the UN Convention on the Rights of the Child Incorporation (Scotland) Bill.</p> <p><b>Impact 3:</b> Contributed to the creation of a watershed new human rights framework for Scotland.</p> <p><b>Impact 4:</b> Resonated further afield, underpinning ESCR reform in other parts of the UK and internationally.</p>		
<b>2. Underpinning research</b>		
<p>The underpinning research contributes to the discourse and practice in three ways. First it highlights that economic, social, and cultural rights (ESCR) are inadequately protected because of an erroneous understanding of international law. Second, it proposes that addressing the accountability gap emerging from this error requires that the rights are incorporated and embedded across the work of Parliament, the Executive, and the Judiciary. Third it concludes that the key enabler to a successful model of incorporation ensures that a remedy for a violation is available and that this remedy must be an effective one. This research has been applied in practice in a devolved context as the 'maximalist' approach to incorporation.</p> <p>Historically, ESCR as defined in international law were considered by legal experts to be aspirational in nature within the UK context. Boyle's research finds this assumption was based on a misunderstanding of the legal status of the rights and as a result there is an <b>accountability gap (R1, R5)</b> for many international human rights that are not adequately protected despite the UK agreeing to comply with them. Boyle's research has proposed <b>models of incorporation</b> for embedding these rights into domestic law – a necessary requirement to make the rights enforceable at the domestic level. The <b>research concludes that democracy benefits</b> from an approach to ESCR that allows <b>individuals and communities to enjoy access to these rights and to hold governments to account</b> when the rights are violated (<b>R1, R2</b>).</p> <p><b>R1</b> and <b>R5</b> find that making these rights legally enforceable is difficult but not impossible. Democratic safeguards can help support a multi-institutional framework where Parliament, the Executive and the Judiciary must each act as important guarantors of international human rights (<b>R1, R5</b>). Boyle's monograph sets out the <b>means of incorporating ESCR</b> (embedding the rights into domestic law); the ways through which the rights can be made <b>justiciable</b> (adjudicated upon in court); and how to do this in a <b>democratically legitimate way, using principles of adjudication</b> derived from deliberative democracy theory (<b>R1</b>, see also <b>R2, R5</b>). The research proposes that the most appropriate model of incorporation requires states to <b>embed compliance and accountability mechanisms across the Parliament, Executive and Judiciary</b> and that an <b>effective judicial remedy must be made available for a violation as a means of last resort (R1-R6)</b>.</p> <p>Boyle was commissioned by the Scottish Human Rights Commission (SHRC) to undertake <b>research into the feasibility of making these rights real as legally enforceable rights</b> in</p>		

Scotland (R5). This commissioned work was supported by years of rigorous legal scholarship on the justiciability (adjudication by court) of ESCR in the UK and comparatively (R1-R6).

The research examines other countries where ESCR are constitutionalised and legally enforceable, such as in Finland, Germany, South Africa, Colombia, and Argentina (R1, R5). The research also sets out **existing pathways to remedies** for violations of the rights as well as **future mechanisms for reform** (R1, R3, R6). The fact that remedies already existed in the UK made it clear that the long-held misunderstanding about the aspirational nature of ESCR was erroneous. The rights are indeed legally enforceable by courts, as is already the case, albeit in a limited way meaning an accountability gap emerged. Boyle's research addresses this gap (R1, R3, R5).

Following the publication of a 2015 SHRC Report by Boyle, the First Minister committed to consider the ways in which Scotland could incorporate international human rights into Scots law. Boyle was then appointed to advise the Scottish First Minister on models of incorporation as a member of the First Minister's Advisory Group on Human Rights Leadership in 2018 (R4). **Boyle's research in this role explored the different models of incorporation for international human rights in Scotland** (drawing from R1-R5). Boyle's research proposed the best means of achieving this was through an overarching constitutional Act for the Scottish Parliament with specific roles for the Parliament, Executive and Judiciary in ensuring accountability for human rights compliance (R1, R5, R6). The research also indicated the importance of facilitating collective complaints and innovative structural remedies to address systemic human rights abuses (R1, R4, R5, R6). These findings fed into the 2018 Advisory Group report (R4), which also cites the 2018 SHRC report authored by Boyle (R5). In R6 Boyle articulated how to achieve a 'maximalist' approach to incorporation of the UN Convention on the Rights of the Child across the Parliament, Executive and Judiciary, including ensuring access to effective remedies for violations as well as accountability in the privatisation of public services.

Boyle is now funded by [Nuffield](#) (2019-2022) to delve deeper into understanding the barriers in access to justice for violations of social rights across the UK.

### 3. References to the research

**R1.** Katie Boyle, *Economic and Social Rights Law, Incorporation, Justiciability and Principles of Adjudication* (Routledge 2020). Submitted as part of REF2.

**R2.** Katie Boyle, The Future of Economic, Social and Cultural Rights in Scotland: Prospects for Meaningful Enforcement, 23 (1) *Edinburgh Law Review* 110-116 (2019) <https://doi.org/10.3366/elr.2019.0531>.

**R3.** Katie Boyle and Edel Hughes, Routes to Remedy for Violations of Economic, Social and Cultural Rights 22 (1) *International Journal of Human Rights* 43-69 (2018).

**R4.** First Minister's Advisory Group on Human Rights Leadership, "Recommendations for a new human rights framework to improve people's lives" (Edinburgh 2018) <http://stir.ac.uk/4fl>. Produced by all members of the Advisory Group, including Boyle.

**R5.** Katie Boyle, Models of Incorporation and Justiciability for Economic, Social and Cultural Rights (Scottish Human Rights Commission 2018), <http://stir.ac.uk/4gr>.

**R6.** Katie Boyle, Written Evidence for the Equality and Human Rights Committee: UNCRC (Incorporation) (Scotland) Bill, 16 October 2020, available from <http://stir.ac.uk/4gu>. 16-page, fully referenced submission, accompanied by oral evidence from Boyle (<http://stir.ac.uk/4gx>).

#### Funding:

- Nuffield Foundation (2019. PI: K. Boyle), Access to Justice for Violations of Social Rights: Addressing the Accountability Gap, GBP338,000.
- Scottish Human Rights Commission (2018, PI: K. Boyle), Incorporation of International Human Rights into Scotland's Devolved Governance, GBP14800.

### 4. Details of the impact

Despite signing and ratifying a number of international treaties including the International Covenant on Economic, Social and Cultural Rights ('ICESCR' in 1968 and 1976, respectively) and the UN Convention on the Rights of the Child ('UNCRC' 1990 and 1991 respectively) the UK has mostly failed to incorporate ESCR into domestic law. There is therefore an accountability gap, as the lack of actual legal rights has limited the ability of people to effect real change. Boyle's research and impact activities have been critical to the bridging of this gap in Scotland.

**Impact 1. Providing key players within the human rights reform process the knowledge on which to build ESCR rights into Scottish/UK law.**

Boyle's research informed and advanced the knowledge base and debate surrounding the incorporation of ESCR in Scotland, allowing key players within the public sphere to proceed with that incorporation. Together (the Scottish Alliance for Children's Rights) is the umbrella organisation for Scottish children's charities working toward implementation of the UNCRC (an international treaty engaging with ESCR of the child). Juliet Harris, Director of Together, states:

"Dr Boyle's research, and the support she has provided to me, has been **key to informing our advocacy work to progress UNCRC incorporation**. Her detailed technical knowledge on the justiciability of economic, social and cultural rights has **changed and developed my understanding of incorporation**, and has **empowered Together to influence the debate on UNCRC incorporation in Scotland**. Dr Boyle's research provided an authoritative tool for Together to challenge some of the myths around ESC rights that emerged during the passage of the Children and Young People (Scotland) Act 2014 and persuade Scottish Government that many concerns raised were unfounded." (S1)

The SHRC report **R5** therefore **progressed the policy positions of grass roots organisations** on better embedding rights. Scotland's Judith Robertson, Chair of the Scottish Human Rights Commission, states that **R5** "has been influential in both understanding the international context for strengthening rights in Scotland and informing the final recommendations of a report to the First Minister on strengthening human rights leadership in Scotland" (S3). As stated by the Social Care Alliance, **R5** progresses the discourse in Scotland on how Scotland should incorporate these rights (S4(d)). In their *Housing is a Human Right* (S4(a)) Shelter refers to Boyle's SHRC report **R5** making the case for a right to housing with regards to the different models for incorporating ESCR in Scotland. Judith Robertson, chair of the Scottish Human Rights Commission, said of Boyle's research:

"There is the political will in Scotland to look at [taking action to better protect people's rights by incorporating these international standards into domestic law]. [Boyle's] research shows there is a wealth of international experience and practice – in court rooms and parliaments – for Scotland to replicate and build on when it comes to protecting all of our economic, social and environmental rights." (S2(a))

Equalities Minister and then Convenor of the Scottish Parliament's Equalities and Human Rights Committee Christina McKelvie welcomed **R5**, stating it furthered the debate on "how to make rights real for every member of society" (S2(a)). She elaborated: "[t]his report is a welcome contribution to a much bigger debate about how we work together as a nation in order to make rights real for every member of society" (S2(b)).

**Impact 2. Underpinning the UNCRC Incorporation (Scotland) Bill (now Act)**

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) [Bill](#) was introduced to the Scottish Parliament on 1 September 2020 and "will provide proactive as well as remedial mechanisms to ensure children's rights are respected, protected and fulfilled" (Bruce Adamson, Children and Young People's Commissioner Scotland, S6). John Swinney, Deputy First Minister and Cabinet Secretary for Education and Skills, states this bill "is one of the most significant pieces of legislation to be introduced to the Scottish Parliament since devolution" (John Swinney, S7). Boyle's **research and expertise were essential** to the model of incorporation adopted in the bill. The bill was [unanimously voted into law](#) by the Scottish Parliament in March 2021, with its protections for the rights of the child taking effect later in 2021.

In 2019 Boyle was appointed to advise Bruce Adamson, Children and Young People's Commissioner Scotland, on a bill for incorporation of the UNCRC and appointed to advise the Scottish Government on incorporation as a member of the UNCRC Incorporation Working Advisory Group. Adamson states that Boyle's

"... research and analysis provided the basis for numerous written briefings, oral presentations and contributions to meetings and was core to the proposed bill submitted to Scottish Ministers on 20 November 2018. Her work was highly influential throughout the long negotiations with Scottish Government between our proposed bill and the eventual introduction of the United Nations Convention on the Rights of the Child (Incorporation)

(Scotland) Bill on 1 September 2020.” (Bruce Adamson, **S6**)

Juliet Harris, Director of Together, further states that Boyle’s contributions were

**“hugely significant in informing the model of incorporation put forward by the Scottish Government.** Dr Boyle brought a depth of experience on both justiciability of ESC rights and the constitutional implications of full and direct incorporation that was of great benefit to the Expert Advisory Group. Her specific expertise supported the international members of the group [to] apply their learning to the Scottish context.”

And this meant that the members’ conclusions

**“were underpinned by a human rights-focussed evidence-base which would have otherwise been lacking. I believe Dr Boyle’s work has played a central role influencing Scottish Government’s commitment to UNCRC incorporation, and ultimately in informing the Bill that has just been laid before the Scottish Parliament” (S1).**

As Adamson confirms: **“Dr Katie Boyle’s work has been essential in securing the commitment from the Scottish Government to take a maximalist approach to incorporation of the United Nations Convention on the Rights of the Child within this session of the Scottish Parliament” (S6).**

John Swinney, Deputy First Minister and Cabinet Secretary for Education and Skills, further thanked Boyle for her “valuable contribution” to the process of creating the bill, and stated that the

**“Scottish Government is committed to implementing all of the majority views expressed by the [Working Advisory] Group either through the Bill itself, within the context of the implementation programme in support of the Bill, or through other policy and legislation” (John Swinney, S7).**

Additionally, Boyle’s research and input has continued to play a role in the development of the Bill. As a Scottish Government representative [redacted from publication to preserve anonymity] **(S8(a))**

This is also represented in the Equality and Human Rights Committee’s Stage 1 report **(S8(b))** on the Bill, which references Boyle’s written evidence **(R6)** 24 times; this is also cited in the SPICE Summary of Evidence for the Bill **(S8(c))**.

### **Impact 3. Creating a New Human Rights Framework for Scotland**

Boyle’s research and expertise **has been, and continues to be, essential in Scotland’s on-going development of a new statutory framework for the inclusion of ESCR into Scots law.** In early 2018, Boyle was appointed to the First Minister’s Advisory Group on Human Rights Leadership to advise on models of incorporation for ESCR. The Advisory Group (comprising Boyle, Busby, Hunt, Lock, McCall, Morgera, Miller [chair], Nolan) reported in December 2018 and recommended a new constitutional human rights Act of the Scottish Parliament that embeds ESCR and environmental rights into Scottish law **(R4)**.

The chair of the Advisory Group, Professor Alan Miller, describes Boyle’s contribution as fundamental to the recommendations of the group. He comments:

**“The central recommendation we [the Advisory Group, including Boyle] made was that there should be a bill prepared to be presented to the Scottish Parliament to establish a new human rights framework for Scotland... Katie [Boyle]’s work was very helpful in that regard, in terms of international practice and models and what might be best adapted to the Scottish context... She was a mine of information and knowledge that we could take advantage of... She was influential...in shaping the model that we presented as being a recommendation for a new human rights framework in Scotland”. (S9(a))**

Boyle’s research directly shaped the framework recommended by the Advisory Group in its final report. These recommendations directly let the Scottish Government to establish a [National Task Force](#) in 2019, which continues to take the recommendations forward to create a new statutory framework. Boyle sits on the five-member Academic Advisory Panel of this Task Force specifically in her capacity as an expert on models of incorporation of ESCR, access to justice and effective remedies.

Miller, co-chair of the National Task Force, sees Boyle’s work as **“instrumentally influential in engineering”** the recommendation of the Task Force: to develop a model that “enables everyone

to take a share of responsibility of making [rights protection] work, with an enhanced role for the Parliament, for the Judiciary, and for the Government” (S9(a)). Judith Robertson, Chair of the Scottish Human Rights Commission and member of the Task Force, explains how Boyle’s research and expertise impacted on this ground-breaking process:

“This work [e.g. R5] has been further built on through Dr Boyle’s membership of the Academic Advisory Group to the National Taskforce on Human Rights Leadership. This group is the follow up process to the Independent Advisory Group and Dr Boyle has further developed her analysis on effective implementation of ESC Rights and the most progressive legal frameworks required for that.” (S3)

She concludes that, “Dr Boyle’s knowledge, expertise and her willingness and ability to both inform and inspire **has made a significant impact on both the National Taskforce and wider civil society and public sector audiences engaging with that process**” (S3). The National Taskforce’s final report, published March 2021, contains numerous references to Boyle’s contributions to this process. The report will now form the basis of Scotland’s new human rights framework (S9(b)).

#### **Impact 4. Underpinning ESCR developments in other parts of the UK and internationally.**

Boyle’s research has been adopted by civil society in other parts of the UK based on the success of legislative reform commencing in Scotland. The Bevan Foundation cite Boyle’s research in support of the right to housing in Wales (S4(b)). Just Fair, an organisation that monitors and campaigns for ESCR across the UK has also explicitly based its work on Boyle’s SHRC research (S4(c)). In Northern Ireland, the Northern Ireland Assembly has relied on Boyle’s research in the Ad Hoc Committee on a Bill of Rights inquiry established in 2020 (S5(a) & (b)). Boyle is now funded by the [Nuffield Foundation](#) to further examine the pathways to justice for violations of ESCR across the UK. The Global Initiative for ESCR is translating Boyle’s work into Spanish to inform the Chilean constitutional reform process. The United Nations Special Rapporteur cited Boyle’s 2018 report as an example of best practice in developing effective remedies for ESCR (S5(c)). The impact of Boyle’s research in Scotland therefore continues to permeate and resonate in developments further afield as providing a theoretical and practical framework for ESCR reform.

#### **5. Sources to corroborate the impact**

**S1.** Testimonial from Juliet Harris, Director of Together

**S2.** (a) Quoted by Goodwin in *The National* article 4 Nov 2018, <http://stir.ac.uk/4ji> ; (b) Quoted by Ross in *The Scotsman* article, 3 Nov 2018, <http://stir.ac.uk/4il>

**S3.** Testimonial from Judith Robertson, Chair of the Scottish Human Rights Commission

**S4.** (a) Shelter Scotland (2019) ‘Housing is a Human Right’. See p.20. <http://stir.ac.uk/4io> ; (b) Simon Hoffman (Bevan Foundation), ‘Incorporation of International Human Rights’, Briefing No. 1 (Feb 2019). See p.9. <http://stir.ac.uk/4ir> ; (c) Koldo Casla, Policy Director of Just Fair, *The Conversation* article, 12 Apr 2019, <http://stir.ac.uk/4iu> ; (d) Blog post welcoming R5: by The Social Care Alliance, <http://stir.ac.uk/4ix>

**S5.** (a) Written evidence to Northern Ireland Assembly Ad Hoc Committee on a Bill of Rights, Boyle, ‘Comparative International and Devolved Best Practice’: <http://stir.ac.uk/4h6> ; (b) Oral evidence to the same committee (17 Sept 2020): <http://stir.ac.uk/4h9> ; (c) UN Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (Jan, 2019, A/HRC/40/61), see p.16. <http://stir.ac.uk/4hc>

**S6.** Testimonial from Bruce Adamson, Children and Young People’s Commissioner Scotland

**S7.** Letter from John Swinney BPA/MSP, to Members of the Incorporating the United Nations Convention on the Rights of the Child into Domestic Law in Scotland Working Group (Sept. 2020).

**S8.** (a) Testimonial from Scottish Government; (b) Stage 1 Report On United Nations Convention On The Rights Of The Child (Incorporation) (Scotland) Bill (Dec 2020) <http://stir.ac.uk/4yf> ; (c) SPICe summary of evidence <http://stir.ac.uk/4h0>

**S9.** (a) Interview with Prof. Alan Miller, Special Envoy of the Global Alliance of National Human Rights Institutions. (b) National Taskforce for Human Rights Leadership Report (March 2021): <http://stir.ac.uk/5mo>