

A REPORT FOR JUST FAIR

Thrive, Not Survive

A REVIEW OF ECONOMIC, SOCIAL AND
CULTURAL RIGHTS IN THE UK



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JANUARY 2022

Table of Contents

Table of Contents	1
Glossary	4
Executive Summary	5
1 Introduction	14
2 Methodology	16
3 Progressive Realisation.....	18
3.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016.....	20
4 Non-Discrimination.....	36
4.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016.....	37
5 The Right to Work.....	43
5.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016.....	44
5.2 Developments since 2016.....	55
5.2.1 Context	57
5.2.2 Asylum Seekers and the Right to Work	63
5.2.3 The Right to Work and Immigration Status	64
5.2.4 Unemployment and Unemployment Disproportionately Affecting Certain Groups	65
5.2.5 Equal Opportunities in the Workplace	69
5.2.6 Low Quality and Low-Paid Work	69
5.2.7 Equality of Women Accessing Work and in the Workplace.....	72
5.2.8 Minimum Wage and Minimum Wage for Young People	74
5.2.9 Bullying and Harassment in the Workplace.....	75
5.2.10 Health and Safety Conditions in the Workplace.....	75
5.2.11 Working Conditions of Migrant Workers.....	76
5.2.12 Right to Form and Join Trade Unions and Associated Rights.....	78
6 The Right to Social Security and Protection	80
6.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016.....	81
6.2 Developments since 2016.....	89
6.2.1 Provision of Social Security in the UK	89
6.2.2 Social Security and the COVID-19 pandemic	92
6.2.3 Discrimination in the provision of social security.....	93

6.2.4	Parental Leave	95
6.2.5	Childcare: Provision of Services	96
6.2.6	Childcare, Housework and Gender Inequality	96
6.2.7	Gender-Based Violence.....	97
7	The Right to an Adequate Standard of Living.....	99
7.1	Evolution until 2016: Analysis of Concluding Observations 1980-2016.....	100
7.2	Developments since 2016.....	110
7.2.1	Poverty Trends in the UK since 2016	111
7.2.2	Is the Right to Housing Sufficiently Protected in the UK?	113
7.2.3	The Financialisation of Housing and Funding Cuts.....	114
7.2.4	General Housing Affordability Trends and Housing Conditions.....	116
7.2.5	Legal Security of Tenure and Evictions in the UK	119
7.2.6	Homelessness	120
7.2.7	Food Availability and Affordability in the United Kingdom.....	121
7.2.8	Food Sustainability and the Impacts of Climate Change	123
7.2.9	Brexit and the Right to Food in the UK	124
7.2.10	The COVID-19 Pandemic's Impact on Adequate Standard of Living	126
7.2.11	Non-Discrimination and Equality	128
8	The Right to Health	132
8.1	Evolution until 2016: Analysis of Concluding Observations 1980-2016.....	132
8.2	Developments since 2016.....	136
8.2.1	Brexit	136
8.2.2	Austerity Measures.....	139
8.2.3	COVID-19 Pandemic	141
8.2.4	Non-Discrimination and Equality	142
9	The Right to Education	145
9.1	Evolution until 2016: Analysis of Concluding Observations 1980-2016.....	146
9.2	Developments since 2016.....	154
9.2.1	Context	156
9.2.2	Non-Discrimination and Equality	160
9.2.3	School Exclusions	172
9.2.4	Bullying	175
9.2.5	Educational Segregation in Northern Ireland.....	176
9.2.6	The Curriculum and Assessment (Wales) Act 2021	178

10 The Right to Culture.....	179
10.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016.....	180
11 Conclusion	182
Bibliography	184
Annexes	210
Annex 1: Topics Identified within Concluding Observations.....	210
Annex 2: Key Word Searches.....	216

Glossary

ASN	Additional Support Needs
BME	Black and minority ethnic
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CYP	Children or young people
DNAC	Do Not Attempt Cardiopulmonary Resuscitation
ECHR	European Convention of Human Rights
EHCP	Education, Health and Care Plan
EHRC	Equality and Human Rights Commission
EOTAS	Education Otherwise than at School
EU	European Union
GEO	Government Equalities Office
GRT	Gypsy, Roma and Traveller
HBT	homophobic, biphobic and transphobic
HCEC	House of Commons Education Committee
HRA	Human Rights Act
HRC	Human Rights Consortium
IBSS	International Bibliography of the Social Sciences
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFS	Institute for Fiscal Studies
LGBT	lesbian, gay, bisexual and transgender
LGBTI	lesbian, gay, bisexual, transgender and intersex
NGO	non-governmental organisation
NIESR	National Institute of Economic and Social Research
PPE	Personal Protective Equipment
SEN	special educational needs
SEND	special educational needs and disabilities
The Committee	Committee on Economic, Social and Cultural Rights
The Covenant	International Covenant on Economic, Social and Cultural Rights
TUC	Trades Union Congress
TFEU	Treaty on the Functioning of the European Union
WTO	World Trade Organisation

Executive Summary

Methodology

This brief will primarily be used by [Just Fair](#) and other NGOs across the UK to inform their approach to the seventh periodic review of the UK by the CESCR. The first part **analyses the concerns repeatedly raised in the UK's six Concluding Observations from 1980 to 2016** on its implementation of ICESCR's substantive rights.

Secondly, based on a systematic keyword search of three different databases – Ebsco Discovery, UK Westlaw and International Bibliography of the Social Sciences (IBSS) – **potentially relevant concerns since 2016 are identified and analysed for each of the substantive rights with a view to the UK's seventh periodic review.** In each of these sections, particular attention is given to funding, Brexit, the COVID-19 pandemic, and non-discrimination, when relevant.

Progressive Realisation

Relating to [ICESCR](#)'s Article 2 (1), progressive realisation refers to the States' obligation to progressively implement the ICESCR's rights by using the maximum available resources.¹

The following reoccurring **concerns** have been identified as trending in the UK's past six ICESCR **Concluding Observations since 1980**:

- The justiciability of economic, social, and cultural rights
- The ratification of human rights instruments and reservations
- The UK Bill of Rights
- The Northern Ireland Bill of Rights
- The Covenant's implementation in the devolved nations and overseas territories
- The establishment of (national) human rights commissions and (national) human rights plans of action
- The national plan of action for business and human rights
- Concerns over taxation
- Data on indicators on economic, social, and cultural rights

¹ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 2 (1).

- The public awareness of economic, social, and cultural rights
- Austerity measures and progressive realisation
- Legal aid restrictions

The Right to Non-Discrimination

Article 2(2) of the ICESCR outlines the obligation of States to guarantee that rights are exercised without discrimination as to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Whilst matters related to non-discrimination are incorporated within each of the substantive rights discussed, **the Committee also raised four standalone issues:**

- General discrimination and progressive realisation of ICESCR rights
- General discrimination based on race, including nationality
- Discrimination against disabled people
- Discrimination based on gender / sex

The Right to Work

There are three main components of work-related rights enshrined in ICESCR. Article 6 incorporates the positive obligation on States to safeguard the right to work, with the core obligation to ensure **non-discrimination and equal protection of employment**. Article 7 outlines the **right to just and favourable conditions of work**, while Article 8 addresses **collective rights to form and join trade unions** as well as associated rights.

Between 1980 and 2016, **the Committee raised 13 areas of concern**, detailed below.

Article 6

- **High rate of unemployment:** raised as a concern in 2009, though positive developments were noted in 2016 (as well as previously in 1997 and 2002).
- **Unequal employment of marginalised and disadvantaged groups:** the most pervasive issue, raised every year since the Committee began monitoring the implementation of ICESCR in the UK.

- **Restrictions on asylum seekers accessing employment:** raised for the first time in 2009 and reiterated in 2016.

Article 7

- **High incidence of precarious employment and low-paid jobs:** quality of work was raised for the first time in 2016, indicating that an increase in overall employment may be masking deeper issues undermining favourable work conditions.
- **Health and safety in the workplace:** raised once in 1985.
- **Working conditions of migrant workers:** raised for the first time in 2009 and reiterated in 2016.
- **National minimum wage insufficient for a decent standard of living:** raised for the first time in 2002 and reiterated in 2016.
- **Minimum wage disparities for young people:** raised for the first time in 2002, reiterated in 2009 and 2016.
- **Inequality between men and women:** discussed by the Committee every year except 2002. Whilst de facto discrimination in accessing work was the main issue raised between 1985 and 1997, the type of work accessed as well as issues within the workplace have been subsequently raised.

Article 8

- **Right to undertake industrial action limited by procedural requirements:** raised as a concern in 2016, the first time the issue has been reiterated since 1985.
- **Right to strike without losing employment:** raised as a concern in 1985, 1997 and 2002.
- **Right of employers to grant incentives to employees who don't join unions:** raised in 1997.

The review of academic and policy-related literature since 2016 indicates that **most issues highlighted in previous Concluding Observations remain unaddressed**. Further, **non-discrimination remains a major cross-cutting challenge**, with analysis of unemployment rates showing a trend of improving overall unemployment without decreasing ethnicity and youth employment gaps (though there have been some positive decreases in the gender and disability gaps). Similarly, **positive measures to ensure “decent work” appear limited**, with

commentators arguing that wider social policies are playing an increasing role in contributing to poor-quality work.

Between 2016 and 2021, the literature indicates that **COVID-19 has exacerbated pre-existing inequities**, with sector shutdowns and unemployment risks most affecting young people, certain ethnic minority groups, disabled people, female workers, as well as the lowest paid and those in precarious work. Some commentators have also identified **risks for the future progressive realisation of the right to work due to Brexit**. However, there have been no immediate drastic changes to legislation, and the impacts remain to be seen.

Finally, civil society and academics continue to highlight the **lack of action on the right to work of asylum seekers** and remedying **work-related disadvantages faced by migrant workers**, as well as issues related to the **right to work of those without regular immigration status**, and **discrimination, bullying and harassment in the workplace**.

The Right to Social Security and Protection

The right to social security protected by Article 9 of ICESCR attempts to ensure an adequate standard of living for all through benefits provided by the state. The CESCR has raised several concerns relating to the provision of social security throughout the six reporting cycles:

- Retrogressive measures were taken as a consequence of the welfare reform and benefit cuts from 2010.
- The disproportionate effect welfare reform has had on disadvantaged and marginalised groups of society.
- The shortcoming in providing pensions and the insufficiency of the benefit to cover basic needs.

Relevant scholarship and civil society reports have pointed towards the effects of the extensive cuts in social security funding, and the welfare reform have had on levels of poverty and the ability of many to afford basic needs such as housing and food. Austerity measures taken in the past ten years are seen as one of the main drivers in the growth in poverty rates.

The current welfare system presents **severe shortcomings in terms of the amount offered in benefits that do not allow households to maintain an adequate standard of living**. The conditionality measures that have been imposed on claimants have also been a major point of criticism towards the UK's welfare system. This is because it imposes a disproportionate burden upon claimants that often leads to the inability of these to access benefits when needed.

Discrimination against disabled people and migrants without permanent residency has received harsh criticism for being responsible for the loss of benefits for many households.

Moreover, the COVID-19 pandemic has exposed the faults of the UK's welfare system, making it clear that decades of austerity measures have left the government unable to respond appropriately to a crisis like this one. Thus, **citizens in the UK have struggled to sustain an adequate standard of living throughout the pandemic due to the insufficient amount of benefits awarded.**

Article 10 covers protection and assistance to the family, encompassing a broad range of obligations, including ensuring special protection for mothers and children as well as eliminating gender-based violence. The Committee has raised **six main issues related to Article 10:**

- Gender-based violence: emphasised in all Concluding Observations since 1997
- Corporal punishment of children in the home
- The condition of children in care
- Parental leave conditions and benefits
- Provision of childcare services
- Ability of foreign partners to join British spouses

Academic literature has highlighted the **impact of the COVID-19 pandemic on some of these issues**, including a reported **increase in gender-based violence and divergence in sharing responsibility for childcare and housework**. Further, criticisms have been raised that shared parental leave policies do not go far enough in encouraging equal sharing of duties and that outside of Scotland, there is **still no commitment to provide 30 hours per week of childcare** for all 3–4-year-olds.

The Right to an Adequate Standard of Living

The right to an adequate standard of living encompasses food, clothing and housing and generally refers to the enjoyment of decent living conditions. The Committee has raised several issues relating to the UK's protection of this right, specifically in relation to poverty, housing and food. From the 1980 to the 2016 reporting cycle, the CESCR has raised seven different issues:

- General levels of poverty across the UK are increasingly worrisome
- Especially high levels of poverty are concentrated in Northern Ireland
- A general lack of improvement in securing basic availability, affordability, and accessibility in housing across the UK
- Discrimination in the provision of housing to disadvantaged and marginalised groups, disabled persons and Roma, Gypsies and Travellers being some of the groups suffering the most
- Rising numbers of evictions, especially targeted at marginalised communities
- Increasingly worrisome levels of homelessness across the UK
- Inability of the government to secure basic access to affordable food

Relevant scholarship has highlighted the devastating effect the 2010 social security reform had on poverty levels across the country. **The government has taken barely any measures to alleviate this situation as poverty remained at 22% of the citizenry living at absolute low income.**² Scholars also denounced how the right to **housing has become a commodity**, leading the government to take finance-focused decisions and moving away from any social housing provision. Off the back of this situation, **affordability trends are rising, as homes are overcrowded and present increasingly bad living conditions.** Moreover, an ever-larger sector of the popular is **dependent on food bank charity** to sustain their livelihood. In the face of rising food prices due to Brexit and possible future increases due to climate change, the government has not taken any relevant action to mitigate the situation, instead relying on the non-profit sector to cover people's nutritional needs.

² 'Poverty Rate by Person Type Over Time, After Housing Costs (AHC)' (2020) Joseph Rowntree Foundation <https://www.jrf.org.uk/data/poverty-rate-person-type-over-time-after-housing-costs-ahc> accessed 16 November 2021.

The hit of the pandemic has been seen as affecting severely sectors of society that were already vulnerable, as is the case with low-paid workers, single households, and minority groups. Meeting housing expenses seemed to be one of the major problems faced during the pandemic and, as things evolve, NGOs expect a surge in evictions due to a lack of social funds to cover these expenses.

Relevant scholarship also highlights the **inability of the government to tackle discrimination against lower income groups in accessing affordable housing and food and preventing homelessness and evictions. Disabled people** are also affected by the **lack of accessible housing** that is neither covered by the government nor the private sector. Lastly, **Gypsies and Travellers have routinely suffered from discriminatory evictions and a lack of culturally adequate housing** that has not been properly tackled by the government.

The Right to Health

Article 12 of the ICESCR recognises the right to physical and mental health and its enjoyment to the highest attainable standard. In particular, the ICESCR delineates the right to health of children, the right to industrial and environmental hygiene, the State Parties' responsibility to prevent various kinds of disease, and the right to access healthcare services.

Over the review cycles since 1980, the following matters have been especially addressed by the Committee:

- Waiting times for surgeries
- Abortion rights in Northern Ireland
- Mental health concerns
- Health Care of Older Persons
- Migrants' Health

Since 2016, Brexit, the effects of austerity-era measures, the COVID-19 pandemic have posed new challenges to the realisation of the right to health in the UK, even as pre-existing inequities, so far as disadvantaged groups such as migrants and asylum seekers, racial and ethnic minorities, and queer communities are concerned, have deepened.

The Right to Education

The ICESCR covers education matters in its Articles 13 and 14, which include the **right to education for *everyone* with the objective of a full development of individuals' personalities and dignity and the promotion of tolerance among society.**³ The Committee, therefore, asserts that the right to education is a gateway right to the realisation of other human rights.⁴

Over the UK's six review cycles **since 1980, the following concerns** have been raised by the CESCR:

- Religious segregation of education in Northern Ireland
- Disparities in educational attainment
- Discrimination in access to education
- Permanent exclusions from school
- Tuition fees and student loans

Since 2016, the literature has mainly highlighted educational issues relating to **non-discrimination for children and young people:**

- **with special educational needs and disabilities**, mainly due to legislative reforms regarding inclusive education in England and the UK's devolved nations,
- **from ethnic or national minorities** with regard to racism in English, Scottish and Welsh higher education and Gypsy, Roma and Traveller children and young people's disproportionate subjection to educational discrimination,
- and **queer⁵ children and young people** regarding their susceptibility to discrimination, bullying and harassment in educational institutions.

³ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 13-14.

⁴ CESCR, 'General Comment No 13: The Right to Education (Art 13)' (8 December 1999) UN Doc E/C.12/1999/10, para 1.

⁵ The term queer is used as an umbrella term for any sexual orientation, gender identity, or sex characteristics that does not neatly fit (hetero)normativity.

Additionally, **school exclusions, bullying** and continued **educational segregation in Northern Ireland** have been addressed repeatedly. Except for the latter, all the concerns have also been linked to the COVID-19 pandemic, which has significantly contributed to the disruption of education and the exacerbation of existing educational inequalities and non-discrimination. Only limited information on the UK's ambiguous funding context and Brexit in relation to the UK's education system has been found.

The Right to Culture

The right to participate in cultural life is enshrined in ICESCR Article 15 (1) (a), which *inter alia* includes the right to the availability of language and the right to access linguistic and cultural heritage.⁶ This provision is particularly relevant with regard to the Committee's **Concluding Observations since 1997**, in which it continuously raises its concern over the **lack of protection and preservation of the Irish language and heritage in Northern Ireland**.

⁶ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 15 (1) (a); CESCR, 'General Comment No 21: Right of Everyone to Take Part in Cultural Life (Art 15, Para 1(a), of the International Covenant on Economic, Social and Cultural Rights)' (21 December 2009) UN Doc E/C.12/GC/21, para 13, 16 (a), 49 (d).

1 Introduction

1.1 The [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR, the Covenant) was adopted by the United Nations General Assembly on 16 December 1966 and came into force on 3 January 1976, when the United Kingdom ratified the treaty. The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights (CESCR, the Committee), a body of eighteen experts established under [Resolution No. 1985/17 of the United Nations Economic and Social Council](#), established, in turn, under Part IV of the Covenant. The monitoring functions assigned to the body relate to the fundamental duty on the State Parties' part to "achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".⁷ All State Parties are obliged to send reports to the Committee regarding the state of the implementation of the rights in their respective jurisdictions every five years, to which the Committee responds with Concluding Observations, where it delineates areas of concerns and makes recommendations. Six such Concluding Observations stand at the moment with respect to the UK, the last of which were made in 2016. The UK is expected to submit its seventh report to the Committee in 2022, a process in which civil society organisations such as [Just Fair](#) participate through the publication of shadow reports, independently published documents that seek to supplement and, more importantly, counter the UK government's official narrative, thereby giving a relatively unbiased, holistic picture of the socio-economic rights landscape of the country. In the following pages, we evaluate the state of the realisation of socio-economic rights in the UK, as enshrined in the ICESCR, to aid such an exercise.

1.2 Since 2016, the UK, and the world, have seen momentous changes. The long years of austerity have come to an end, though its repercussions are likely to be felt for several years in the future, if not decades; the United Kingdom has left the European Union, kicking off a series of political, legal, and economic events with which the UK is still coming to terms; and the COVID-19 pandemic has been an unprecedented event in the life of many, and as it enters its third year in 2022, the 'new normal' continues to present new challenges every day. With the government scrambling to address such challenges, it is imperative, now more than ever, that its actions be monitored and analysed with hawk-like concentration and keenness, ensuring that

⁷ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, art 2(1).

socio-economic entitlements are not sacrificed at the altar of political contingency and fiscal thrift, as they frequently have, and regrettably, been in the past.

1.3 The future can only be suitably confronted with an adequate understanding of the past. In the following paragraphs, we have endeavoured to undertake such an approach through, first, examining the previous Concluding Observations, and secondly, by examining scholarship in recent years that seeks to elaborate upon the events of the present. We hope that the readers can, through our analysis, gain a contextual appreciation of the rights elaborated upon herein, backward-looking in its attention to historical precedent and forward-looking in its anticipation of the challenges of the future.

1.4 We have analysed the corpus of socio-economic rights enshrined in the ICESCR under six broad headings: the right to work, right to social security, right to an adequate standard of living, right to health, right to education, and cultural rights. However, we are mindful that all these aforementioned rights do not exist in isolated silos but instead interact with each other. Equally, we were conscious that the treaty encapsulates concepts, such as progressive realisation and non-discrimination, that underlie and ensure the robust provision of all socio-economic rights envisaged within it. To that end, we have addressed these concepts in separate sections, as well as within our treatment of substantive rights. To the best of our capabilities, we have also attempted to guide readers through the document with cross-references that attend to the intersections of such rights.

1.5 We hope that the following pages are of interest not only to the professionals and the practitioners but to all those who believe, as we do, that governments have an obligation to ensure, as our title suggests, that its citizens thrive, not merely survive in society. This exercise proceeds from our firm conviction that socio-economic rights and entitlements form the bedrock of civilised society and need to be taken seriously by those responsible for not only protecting them but also ensuring that they may be realised to their fullest. It is our humble attempt to bring some accountability to bear on the UK for the provision of such rights, an attempt in which we hope we have succeeded.

2 Methodology

2.1 Against the backdrop of this brief's goal, which is providing a basis for [Just Fair](#)'s approach to the UK's seventh periodic review by the CESCR, the remainder of the report is structured along two core methodological approaches:

- the analysis on the Committee's Concluding Observations⁸ on the UK's implementation of the substantive rights in [ICESCR](#) from 1980 to 2016
- and the literature review on (potentially) relevant concerns of the UK's implementation of ICESCR's substantive rights since 2016.

2.2 The sections on the **Concluding Observations between 1980 and 2016** are summarised in a table (see [Annex 1](#)) that provides a systematic overview of the issues raised by the Committee, structured along the Covenant's **substantive rights**:

- Progressive realisation – ICESCR Article 2 (1)
- Non-discrimination – ICESCR Article 2 (2)
- The right to work – ICESCR Articles 6, 7 and 8
- The right to social security and protection – ICESCR Articles 9 and 10
- The right to an adequate standard of living – ICESCR Article 11
- The right to health – ICESCR Article 12
- The right to education – ICESCR Articles 13 and 14
- The right to participate in cultural life – ICESCR Article 15 (1) (a)

2.3 A more concise version of the table can be found at the beginning of each Concluding Observations section. Reflecting the content of these tables, the sections on the **Concluding Observations systematically analyse the core issues** that the CESCR has raised between 1980 and 2016 under **each substantive right**. This analysis includes observations on the Committee's **change in tone, language, and prioritisation of issues over time**, with the primary objective of **identifying general trends** over the years. Additionally, the sections intend to **contextualise the concerns** raised by the CESCR by referring to various non-governmental organisations' (NGOs) [shadow reports](#) and the issues addressed therein. Finally,

⁸ According to the UN Human Rights Office of the High Commissioner, Concluding Observations are positive conclusions and areas of concern issued by the CESCR on a State's implementation of ICESCR. Based on that the Committee commonly makes recommendations on where the State has to take further action. – 'Glossary of Technical Terms' (OHCHR) <https://www.ohchr.org/en/hrbodies/pages/tbglossary.aspx> accessed 14 January 2022.

it is important to note **it is commonly understood among civil society that once the Committee makes a Concluding Observation, it stands until it is resolved.**

2.4 The second part of each section encompasses a **systematic literature review** on relevant developments relating to **economic, social, and cultural rights** in the UK **since 2016**. For this purpose, three online databases – [Ebsco Discovery](#), [Westlaw UK](#) and International Bibliography of the Social Sciences ([IBSS](#)) – have been searched for pertinent keywords in relation to work, social security and protection, adequate standard of living, health and education (see information box [Annex 2](#)). A particular focus has been put on **funding, Brexit, the COVID-19 pandemic, and non-discrimination**. The search has been narrowed down to literature between 2016 and 2021, to the UK’s jurisdiction, and to only include (e)books, academic journal articles and reports.

2.5 In the following sections, scholars or authors are referred to with gender-neutral pronouns unless their gender is explicitly stated.

3 Progressive Realisation

3.1 This section covers matters related to Article 2 (1) of [ICESCR](#), which refers to States' obligations to "take steps [...] to the maximum of its available resources, with a view to achieving progressively the full reali[s]ation of the rights recogni[s]ed in [ICESCR]" – this provision is also referred to as progressive realisation which recognises the fact that the realisation of all of ICESCR's norms will only be achieved over a more extended period of time.⁹ The Committee has emphasised the article's exceptional importance in relation to the entirety of ICESCR and has highlighted its relationship with *all* ICESCR provisions.¹⁰ It has elaborated that although the full realisation of the respective rights may be achieved progressively, the steps towards the objective have to be taken "within reasonably short time"¹¹ and should "move as expeditiously and effectively as possible" towards full realisation.¹²

3.2 Steps towards ICESCR's full realisation may include:

- legislation
- judicial remedies
- administrative, financial, educational, and social measures

and States are obliged to justify their choice in terms of their appropriateness.¹³

3.3 In [General Comment No 10](#), the CESCR has also highlighted the role national human rights institutions (can) play in promoting and protecting human rights and, therefore, ultimately also in the progressive realisation of ICESCR's rights.¹⁴ Additionally, the Committee has imposed so-called minimum core obligations on States in its [General Comment No 3](#): they must ensure that the minimum essential standard of every right is met and have to prove that they have used all available resources to meet these standards.¹⁵ Any retrogressive measures

⁹ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 2 (1).

¹⁰ CESCR, 'General Comment No 3: The Nature of State Parties' Obligations (Art 2, Para 1, of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 1, 9.

¹¹ *ibid*, para 2.

¹² *ibid*, para 9.

¹³ *ibid*, para 4-5, 7.

¹⁴ CESCR, 'General Comment No 10: The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights' (10 December 1998) UN Doc E/C.12/1998/25.

¹⁵ CESCR, 'General Comment No 3: The Nature of State Parties' Obligations (Art 2, Para 1, of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 10.

that have been introduced deliberately must be justified with regard to every ICESCR norm and in view of the use of the maximum available resources.¹⁶

3.4 Furthermore, the CESCR has clarified that ICESCR norms have to be recognised in domestic legal orders, and they have to “directly and immediately” operate therein.¹⁷ Although this can be done by incorporating the rights in domestic law, the Committee has specified that this is not a formal State obligation.¹⁸ Therefore, the CESCR has asked States to inform the Committee on whether the ICESCR’s rights “can be invoked before, and directly enforced by, the Courts, other tribunals or administrative authorities”.¹⁹

3.5 More recently, the CESCR has elaborated that States’ obligation to respect, protect and fulfil rights also applies in the context of business activities under their (extraterritorial) jurisdiction – speaking to States’ obligation to ensure businesses’ activities are in line with ICESCR provisions²⁰ and to States’ legal liability in terms of “the action or inaction of business entities”^{21, 22} It has specified that taking necessary steps, to the maximum of a State’s available resources, may include the mobilisation of State resources, such as the enforcement of taxation schemes²³ and that to this end, States are expected to develop national action plans or strategies on business and human rights.²⁴

3.6 The Committee’s extensive elaborations on the progressive realisation of ICESCR and the Covenant’s general implementation in both the UK and its devolved nations is reflected in the number of times both issues have been raised in the UK’s Concluding Observations.

¹⁶ *ibid*, para 9.

¹⁷ CESCR, 'General Comment No 9: The Domestic Application Legal Order' (3 December 1998) UN Doc E/C.12/1998/24, para 2, 4.

¹⁸ *ibid*, para 8.

¹⁹ *ibid*, para 12.

²⁰ CESCR, 'General Comment No 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' (10 August 2017) UN Doc E/C.12/GC/24, para 58.

²¹ *ibid*, para 11.

²² *ibid*, para 10.

²³ *ibid*, para 23.

²⁴ *ibid*, para 58.

3.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016

	Negative or insufficient developments
	Positive developments

Rights	Issue	Concluding Observations: Cycle and Year							
		VI 2016	V 2009	IV 2002	III 1997	II 1994	II 1985	I 1981	I 1980
Article 2: progressive realisation and ICESCR's implementation	Justiciability of economic, social, and cultural rights							-	-
	Ratification of human rights instruments and optional protocols, and reservations to treaties				-	-	-	-	-
	UK Bill of Rights concerns				-	-	-	-	-
	Bill of rights in Northern Ireland				-	-	-	-	-
	Devolved administrations / territories implementation				-		-		
	(National) human rights commissions	-			-	-	-	-	-
	(National) human rights plans of action				-	-	-	-	-
	National action plan on business and human rights		-	-	-	-	-	-	-
	Develop indicators on ECS rights, human rights assessment, statistics		-	-		-		-	-
	Public awareness of economic, social, and cultural rights				-		-	-	-
	Impact of tax policies		-	-	-	-	-	-	-
	Austerity measures with a view to ICESCR's progressive realisation-impact on disadvantaged / marginalised (<i>EHRT art 2, 11</i>)		-	-		-	-	-	-
	Legal aid- restricted access to justice due to legal aid system reforms and introduction of employment tribunal fees		-	-		-	-	-	-

Table 1: Overview of issues related to progressive realisation raised by the Committee in each Concluding Observation, since the first periodic review in 1981.

3.7 In general, concerns over [ICESCR](#)'s progressive realisation and its implementation have been voiced on a regular basis over the six review cycles. Two issues have been raised five out of six times – **the justiciability of economic, social, and cultural rights** and the **Covenant's implementation in the devolved nations and overseas territories** – both relating to the Committee's recommendation to States to recognise ICESCR provisions within domestic legal orders. They will be considered as indicators of the UK's actions to ensure a framework that will lead to the progressive realisation of all economic, social, and cultural rights. Without ensuring that these issues of a more general character are dealt with, it is unlikely that any effective policies will be enacted for the protection of substantive rights under ICESCR. Another critical concern that the Committee has referred to frequently which is related to the first one, is the **public's awareness of economic, social, and cultural rights**. Concerns over the establishment of both **(national) human rights commissions** and **(national) human rights plans of action** have been raised for the first time in the UK's fourth review cycle in 2002 and continue to be of concern until today. Other important issues raised by the Committee are related to the implementation of certain pieces of legislation that might jeopardise the enjoyment of the socio-economic rights (the new Bill of Rights) or the lack of action in other areas of legislative implementation, such as the **delay in the implementation of the Northern Ireland Bill of Rights** and the national plan of action for business and human rights. **Concerns over taxation and austerity measures** are also raised, with a special link to the 2008 financial crisis as well as the restriction of legal aid for the protection of economic, social, and cultural rights.

Justiciability of Economic, Social and Cultural Rights

3.8 Relating to States' progressive realisation obligation to make [ICESCR](#) norms directly applicable in domestic courts,²⁵ the CESCR has referred to the justiciability of the UK's economic, social, and cultural rights in every cycle, except for the first reporting cycle. It is first raised by France's Committee member in the second review cycle when he asked about the "role of the judicial system" in ICESCR's implementation. In response, the UK only referred to industrial tribunals, which had covered many employment-related matters.²⁶ It is also the first time the Committee expresses its concern over the **insufficient consideration of legal**

²⁵ CESCR, 'General Comment No 9: The Domestic Application Legal Order' (3 December 1998) UN Doc E/C.12/1998/24, para 2, 4, 8.

²⁶ CESCR, 'Seasonal Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 6.

professionals and judges of ICESCR within domestic law.²⁷ In 1997, the CESCR points to the State's "disturbing" position that uses the argument that ICESCR provisions only constitute "principles and programmatic objectives rather than legal obligations"²⁸ to justify why the provisions had not been given legislative effect.²⁹ It, therefore, asks for the **full implementation of ICESCR rights** via the introduction of ICESCR into the UK's domestic legislation.³⁰ The exact same concern is reiterated in the UK's fourth – the CESCR "deeply regrets" the fact that the UK had still not incorporated ICESCR into its domestic legal order and had not expressed any intention to do so "in the near future"³¹ and reiterates its concern over the UK's position on the weight of ICESCR's provisions³²- and fifth³³ review cycle. It, therefore, "urges" the UK in 2009 to give full legal effect to ICESCR in its domestic law, to make its provisions justiciable, and to make effective remedies available to *everyone*.³⁴ In 1997 the Committee also recommends that the UK considers including human rights assessments and impact statements as an integral part of every prospective piece of legislation and policy.³⁵ Consequently, it **"strongly" recommends re-examining ICESCR's incorporation into domestic law**. This is **underlined by the Committee's referral to its [General Comment 9](#)** and its statement that **State parties are always obligated to** comply with a ratified international instrument and

²⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 8.

²⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 10.

²⁹ *ibid*.

³⁰ *ibid*, para 21.

³¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 11.

³² *ibid*.

³³ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 13.

³⁴ *ibid*.

³⁵ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 33.

therefore “**give it full effect in the domestic legal order**”.³⁶ Additionally, by referring to its 1997 recommendation in paragraph 33, the Committee asks the UK to review and strengthen the governmental administration’s institutional arrangements that are intended to provide for the taking into account of ICESCR’s provisions.³⁷ In its most recent Concluding Observations on the UK, the Committee once more expresses its concern over the fact that UK courts cannot directly apply ICESCR provisions. By referring to its [General Comment 9](#) on the domestic application of ICESCR, it again “urges” the UK to “fully incorporate the Covenant rights into its domestic legal order”.³⁸ Moreover, it points towards the UK’s responsibility to ensure ICESCR’s implementation in *all* its jurisdictions, including the British Overseas Territories and Crown Dependencies.³⁹

3.9 To summarise, although the Committee had raised the **domestic implementation concern** already in the UK’s second reporting cycle in 1985, it **has not been resolved to date**. On the contrary, the [Equality and Human Rights Commission](#)’s (EHRC) human rights tracker indicates a **regression** in the UK’s legal protection of economic, social and cultural human rights in March 2021.⁴⁰ However, **Scotland’s plan to incorporate *inter alia* ICESCR norms** into Scots law will make the Concluding Observations of the UK’s seventh reporting cycle interesting in this regard.

Ratification of Human Rights Instruments and Optional Protocols, and Reservations to Treaties

3.10 Another relevant factor in the progressive realisation of economic, social, and cultural rights is ratifying relevant treaties that protect and advance these rights for all.

3.11 The UK ratified the [ICESCR](#) in May 1976, although with some reservations. Nevertheless, the Committee has pointed out on several occasions that the government has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural

³⁶ *ibid*, para 24.

³⁷ *ibid*, para 25.

³⁸ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 5-6.

³⁹ *ibid*, para 8.

⁴⁰ Equality and Human Rights Commission (EHRC), 'Equality and Human Rights Legal Framework – UK Government Assessment' (18 March 2021) <https://humanrightstracker.com/en/progress-assessment/equality-and-human-rights-legal-framework-uk-government-assessment/> accessed 29 November 2021.

Rights in 2008. Both in the 2009 and 2016 reporting cycles, the Committee encourages the UK to access and ratify the protocol.⁴¹ The protocol would entail a further move towards the justiciability of economic, social, and cultural rights in the UK **since individuals would be able to submit communications** when all domestic remedies have been exhausted.⁴² The UK is also advised to withdraw its reservations to the treaty in 2002 and 2009.⁴³

3.12 The ICESCR and its Optional Protocol are not the only relevant instruments that protect the enjoyment of economic, social, and cultural rights. Because of the interlinkage of rights and the fact that specific issues disproportionately affect certain groups, it is crucial for the enjoyment of economic, social, and cultural rights that State Parties have ratified other international human rights instruments.

3.13 The Committee considered a positive development that the UK had ratified in 2005 the **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women**.⁴⁴ Similarly, in 2016, the CESCR praises the government for ratifying the **Convention on the Rights of Persons with Disabilities and its Optional Protocol** in 2009.⁴⁵ Nevertheless, both reporting cycles point out the need to ratify other instruments. In 2009, the Committee encourages the UK to ratify the **Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**.⁴⁶ In 2016, the UK is encouraged once

⁴¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 39; Committee on Economic, Social and Cultural Rights, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 69.

⁴² Optional Protocol to the International Covenant on Economic, Social and Cultural Rights : resolution / adopted by the General Assembly, 5 March 2009, A/RES/63/117.

⁴³ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 43; Committee on Economic, Social and Cultural Rights, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 40.

⁴⁴ *ibid*, para 8.

⁴⁵ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 3.

⁴⁶ CESCR 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great

again to ratify the aforementioned Convention together with “the **International Convention for the Protection of All Persons from Enforced Disappearance**, the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure”.⁴⁷

Concerns over the UK Bill of Rights

3.14 The UK passed the Human Rights Act in 1998⁴⁸ and it represents an instrument that gives effect to rights recognised in the European Convention of Human Rights (ECHR) in the UK legal system.⁴⁹ **The UK government proposed a transformation of this document in 2015 into a British Bill of Rights and has been in the process of consultations and research ever since.**⁵⁰ Whereas the passing of such legislation would be a step towards the enshrinement of socio-economic rights in UK law and, thus, a step towards the realisation of such rights, the changing of **the document could potentially entail the country taking retrogressive measures in the protection of substantive rights.**

3.15 The Committee first introduced a remark on the possible introduction of a Bill of Rights in 2009. The Concluding Observations contain a recommendation where the government is advised to properly include and enforce economic, social, and cultural rights in this potential legislation.⁵¹ In 2016, the Committee’s tone becomes more concerned about the fact that the new Bill of Rights might “lower the status of international and regional human rights standards [...] in the State party”.⁵² The UK government is advised to conduct broad consultation on the

Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 46.

⁴⁷ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 70.

⁴⁸ UK Public General Acts, 'Human Rights Act' (1998).

⁴⁹ Scottish Government, 'The Human Rights Act and the Bill of Rights' (2021) <https://www.gov.scot/policies/human-rights/human-rights-act/> accessed 29 November 2021.

⁵⁰ *ibid.*

⁵¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 38.

⁵² CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 9.

Human Rights Act 1998 and ensure all economic, social, and cultural rights provisions are adequately incorporated into the UK legal system.⁵³

3.16 Non-governmental organisations also expressed their concern about implementing the new legislation. Amnesty International considers the Human Rights Act (HRA) to be a good contribution to protecting human rights in the UK. In addition, it points out that the introduction of the new Bill of Rights “appears to be focussed upon allowing the government to provide less protection for human rights in the UK than the core protections currently offered by the ECHR and the Strasbourg Court”.⁵⁴ The EHRC expressed equal concern about the change in legislation by stating that the HRA is a well-drafted document that protects human rights in the UK, and they would not support any change that would reverse this protection.⁵⁵ Recent developments point towards the sustained relevance of the issue; since the government has consistently stated its intention to overhaul the HRA, it is likely that NGOs⁵⁶ and the CESCR itself will bring up the issue in the coming reporting cycles.

Need to Implement a Northern Ireland Bill of Rights

3.17 The Belfast (Good Friday) Agreement was signed in 1998.⁵⁷ It contained a commitment to draft a Bill of Rights for Northern Ireland that would implement international human rights standards in accordance with the particular circumstances in Northern Ireland.⁵⁸ The Committee has repeatedly brought up the absence of the Northern Ireland Bill of Rights despite commitments made in the peace agreement.

⁵³ *ibid*, para 10.

⁵⁴ Amnesty International, 'Submission to the United Nations Committee on Economic, Social and Cultural Rights (June 2016), page 5.

⁵⁵ EHRC, 'Socio-Economic Rights in the UK: Updated Submission to the UN Committee on Economic, Social and Cultural Rights in Advance of the Public Examination of the UK's Implementation of ICESCR (April 2016).

⁵⁶ The British Institute of Human Rights, 'Government Obsession with “Overhauling” our Human Rights Act Risks Undermining All our Rights’ (14 December 2021) <https://www.bih.org.uk/news/hraconsultation1> accessed 16 January 2022.

⁵⁷ UK Government, 'The Belfast Agreement' (10 April 1998).

⁵⁸ Human Rights Consortium, 'ICESCR Updated Shadow Report: Submission from the Human Rights Consortium to the United Nations Human Rights Committee on Economic, Social and Cultural Rights (CESCR's) Review of the UK's 6th Report' (April 2016).

3.18 In the 2002 Concluding Observations, the CESCR recognises that the UK created the Northern Ireland Human Rights Commission and recommended that the government include socio-economic rights in the drafting of a potential Northern Ireland Bill of Rights.⁵⁹ Nevertheless, subsequent reporting cycles reprimand the government for the lack of action in enacting the document. In 2009, the Committee celebrates that the UK had drafted a Bill of Rights for Northern Ireland but requested the government to make sure it was enacted.⁶⁰ Organisations had been concerned that the UK government ignored the Northern Ireland Human Rights Commission recommendations⁶¹ and that it has not been turned into legislation yet, making the process extremely long.⁶² In 2016, the Committee mentions the issue once again and regrets that the bill has not yet been adopted.⁶³

ICESCR's Implementation in the Devolved Nations, British Overseas Territories and Crown Dependencies

3.19 In its first review cycle, the UK had decided not to report in detail on its non-metropolitan territories but instead refer to information previously given to the United Nations and International Labour Organisation (ILO).⁶⁴ It also specified that ICESCR did not apply to its “associated states” because the UK had not ratified the Covenant on their behalf.⁶⁵ In 1994 the Committee then “notes with interest” the UK’s promotion of self-rule in numerous Dependent Territories⁶⁶ but at the same time points towards the **UK’s obligation to implement**

⁵⁹ *ibid*, para 29.

⁶⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 10.

⁶¹ JUSTICE, 'A Bill of Rights for Northern Ireland' (2018) <https://justice.org.uk/bill-rights-northern-ireland/>

⁶² <http://qppl.qub.ac.uk/a-bill-of-rights-for-northern-ireland/> accessed 29 November 2021.

⁶³ CESCR, 'Concluding Observations on the Sixth periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 9.

⁶⁴ CESCR, 'First Regular Session, 1980: Sessional Working Group on the Implementation of the Covenant on Economic, Social and Cultural Rights: Summary Record of the 19th Meeting' (30 April 1980) UN Doc E/1980/WG.1/SR.19, para 23, 46.

⁶⁵ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 24.

⁶⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 5.

ICESCR in all its Dependent Territories,⁶⁷ which would be a basic requirement to being able to fulfil its progressive realisation obligation. By 2002, the CESCR emphasises its appreciation for the presence of representatives of some of the Crown Dependencies and Overseas Dependent Territories in the UK's fourth reporting process,⁶⁸ a statement reversed in the UK's following review cycle when the Committee notes the absence thereof.⁶⁹ Despite considering the UK's particular government structure, the CESCR also expresses its concern about the **“lack of a national strategy to implement the Covenant”** and “urges” the UK to adopt a national strategy for ICESCR's implementation in *all* its territories to guarantee the enjoyment of economic, social and cultural rights by *everyone* in 2009.⁷⁰ In 2016, it not only laments the absence of representatives from Northern Ireland but also continues to “regret” the lack of information on economic, social and cultural rights in the British Overseas Territories and the Crown Dependencies, and the general **insufficient involvement of Northern Ireland in the reporting process**.⁷¹ It, therefore, reminds the UK once more of its responsibility to implement ICESCR in *all* its jurisdictions.⁷²

⁶⁷ *ibid*, para 7.

⁶⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 3.

⁶⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 2.

⁷⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 12.

⁷¹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 2, 7.

⁷² *ibid*, para 8.

(National) Human Rights Commissions

3.20 Building on its previous concerns on the full implementation of [ICESCR](#) and the Committee's **emphasis on the role of domestic human rights commissions can play in the Covenant's implementation**, the CESCR compliments Northern Ireland on the establishment of the Northern Ireland Human Rights Commission in 1998.⁷³ At the same time, it “strongly recommends” to England, Wales and Scotland to also establish a national human rights commission to promote and protect economic, social and cultural human rights.⁷⁴ The Committee, therefore, congratulates the UK on establishing the EHRC and the Scottish Human Rights Commission in 2009.⁷⁵ Consequently, the concern is not reiterated in the UK's sixth and most recent reporting cycle.

(National) Human Rights Plans of Action

3.21 In 2002, the Committee expresses its **deep concern over the lack of a national human rights plan of action in the UK** for the first time⁷⁶ and therefore “**urges**” the UK to **develop such a plan “as soon as possible”**.⁷⁷ The same concern is reiterated in the UK's next review cycle when the CESCR recommends the consultation of civil society for the adoption of a national human rights plan of action.⁷⁸ In 2016 the CESCR notes its appreciation for the adoption of Scotland's National Action Plan for Human Rights (2013-2017)⁷⁹, but it does not

⁷³ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 5.

⁷⁴ *ibid*, para 28.

⁷⁵ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 4.

⁷⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 12.

⁷⁷ *ibid*, para 27.

⁷⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 14.

⁷⁹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 4(d).

touch upon the situation in England or any of the other devolved nations. However, the EHCR's human rights tracker points towards the UK's continued refusal to establish a national action plan on human rights.

National Action Plan on Business and Human Rights

3.22 The issue of business and human rights has been dealt with only on a few occasions in all the reporting cycles the UK has gone through, but it is paramount to discuss it briefly.

3.23 Recalling [General Comment No 24](#), the Committee establishes that all State Parties to the Covenant must observe the obligation to respect and protect all individuals against the possible adverse consequences business' actions might have on the enjoyment of human rights.⁸⁰ According to the CESCR, **States cannot prioritise business interests without an appropriate justification**. This is not only a negative obligation but also requires the government to actively adopt legislation and administrative frameworks to regulate the activity of business and provide adequate redress when violations occur.⁸¹ Consistently prioritising business interests would move the UK away from the realisation of socio-economic rights, thus implying that, instead of taking the necessary steps towards their realisation, they would be taking retrogressive steps.

3.24 This is why, in the context of the last review cycle in 2016, the Committee expresses concern about the “lack of a regulatory framework to ensure that companies [...] fully respect economic, social and cultural rights”.⁸² **The UK is advised to enact a suitable regulatory framework to prevent violation of rights and ensure liability from companies' actions in and outside UK territory.**⁸³ Remarkably, the Committee also advises the government to conduct a risk assessment and end any contract that is suspected of being used to sell arms that might violate human rights.⁸⁴

⁸⁰ CESCR, 'General Comment No 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities' (10 August 2017) UN Doc E/C.12/GC/24.

⁸¹ *ibid.*

⁸² CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 11.

⁸³ *ibid.*, para 12.

⁸⁴ *ibid.*, para 12.

The Impact of Taxation

3.25 The Committee has also once before expressed concern in its 2016 Concluding Observations about the recent changes made to fiscal policy, implementing a reduction of the tax on corporate income and increasing the threshold for the payment of inheritance.⁸⁵ **This is especially worrisome since, as the Committee points out, it jeopardises the ability of the government to fulfil socio-economic rights due to a lack of economic resources.** Because [General Comment No 24](#) required the state to mobilise resources to achieve the Covenant's rights⁸⁶, the government is advised to ensure that their fiscal policy provides enough resources to fulfil substantive rights and taxation does not become a burden to disadvantaged sectors of society.⁸⁷ Taxation is often seen as one of the measures that can take a given country towards the realisation of rights since it provides for the necessary resources.⁸⁸ It is, thus, highly problematic that not enough resources are being drawn from big fortunes and average people are being overly burdened.

Development of Indicators and Disaggregated Data on Economic, Social, and Cultural Rights and Human Rights Assessment and Statistics

3.26 Another substantive obligation under the Covenant, as laid out in [General Comment No 3](#), is monitoring “the extent of the realisation, or more especially of the non-realisation, of economic, social and cultural rights”.⁸⁹ In this regard, **the UK has received recommendations and requests on several occasions to provide evidence that it has monitoring tools in place.**

3.27 The first time this issue is brought up by the Committee is 1985, when the government is required to provide more up-to-date statistics in relation to adequately how they have been implementing the Covenant.⁹⁰ In 1997, the Concluding Observations document pointed out the

⁸⁵ *ibid*, para 16.

⁸⁶ CESCR, 'General Comment No 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' (10 August 2017) UN Doc E/C.12/GC/24, para 23.

⁸⁷ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 17.

⁸⁸ CESCR, 'General Comment No 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' (10 August 2017) UN Doc E/C.12/GC/24.

⁸⁹ CESCR, 'General Comment No 3: The Nature of State Parties' Obligations (Art 2, Para 1, of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 11.

⁹⁰ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 4.

need to make human rights assessments “an integral part of every proposed piece of legislation or policy”.⁹¹ In addition, both the 2002 and the 2009 Concluding Observations carry a recommendation asking the government to provide more information on the impact of certain programmes⁹² and more data on the possible discriminatory impacts of some welfare policies.⁹³

3.28 The issue was lastly brought up in 2016. **The Committee advised the UK to develop a comprehensive methodological framework to analyse the extent of the application of the Covenant.**⁹⁴

3.29 Moreover, it is worth pointing out that, when conducting the analysis about the substantive rights, the Concluding Observations often require the UK government to provide further information and properly monitor the situation of the respective rights.

Promotion of Public Awareness of Economic, Social, and Cultural Rights and Public Participation

3.30 The promotion of public awareness of economic, social, and cultural rights is another issue brought up by the Committee in several of the Concluding Observations that would, if dealt with, move the State Party towards the progressive realisation of socio-economic rights. It was first mentioned in 1994 when the CESCR expressed concern that **public and non-governmental organisations' concerns had not been given sufficient importance during the drafting of the report.** The CESCR went on to criticise the fact that judges had not given

⁹¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 33.

⁹² CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 32.

⁹³ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 42.

⁹⁴ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 72.

enough importance to the implementation of the Covenant either.⁹⁵ Thus, the UK is advised to disseminate appropriate information to all those involved in the implementation of the rights (judges, civil servants, social workers, etc).⁹⁶

3.31 A similarly worded concern is expressed in 2002 when the Committee points out that not enough importance is given to economic, social, and cultural rights when educating school children, the judiciary, prosecutors, government officials, civil servants, etc.⁹⁷ **The UK is thus advised to implement human rights education in the curricula.**⁹⁸ The government is also advised to disseminate the Concluding Observations widely among the country's society.⁹⁹

3.32 In 2009, the Committee reiterates its concern about the low levels of public awareness in relation to economic, social, and cultural rights, as it is crucial that those enforcing laws know about the relevant substantive rights in place. The document highlights that judges, public officials, police and law enforcement officials, and health-care workers are rarely exposed to human rights rhetoric.¹⁰⁰ The recommendations, in this case, are focused on the **need to promote the rights enshrined in the Covenant**, not merely as part of the Welfare State, but also as internationally applicable norms with their intrinsic value, examine¹⁰¹ and the UK is encouraged to disseminate the content of the Concluding Observations as widely as possible.¹⁰²

⁹⁵ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 8.

⁹⁶ *ibid*, para 14.

⁹⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 13.

⁹⁸ *ibid*, para 30.

⁹⁹ *ibid*, para 44.

¹⁰⁰ CESCR 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 15.

¹⁰¹ *ibid*, para 15.

¹⁰² *ibid*, para 45.

The same recommendation is made in 2016 by the Committee, asking the government to disseminate the information and coordinate with non-governmental organisations.¹⁰³

The Impact of Austerity Measures for the Progressive Realisation of Economic, Social and Cultural Rights

3.33 The Committee has previously dealt with the effect of austerity measures on economic, social, and cultural rights. In its [General Comment No 3](#), the CESCR asserts that “even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes”.¹⁰⁴

3.34 Given the principle that austerity measures must not disproportionately affect socio-economic rights, the Committee has expressed concern about the issue on a few occasions throughout the review cycles. **The first mention was related to “self-imposed budgetary constraints” that were jeopardising the ability of the government to mitigate the difficulties faced by the most marginalised groups in society.**¹⁰⁵ The Committee’s concern is picked up again in 2016 with a slightly more severe tone. The document expresses deep concern about the austerity measures introduced in 2010 and their pervasive impact on the enjoyment of economic, social, and cultural rights among disadvantaged groups of society.¹⁰⁶ The UK is reminded that austerity measures “must be temporary, necessary, proportionate and not discriminatory, must not disproportionately affect the right of disadvantaged and marginali[s]ed individuals and groups and respect the core content of rights”.¹⁰⁷ For this reason, the government is advised to review all policies introduced since 2010 and conduct an examination of the impact of these pieces of legislation on socio-economic rights.¹⁰⁸

¹⁰³ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 72.

¹⁰⁴ CESCR, 'General Comment No 3: The Nature of State Parties' Obligations (Art 2, Para 1, of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 12.

¹⁰⁵ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 8.

¹⁰⁶ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 18.

¹⁰⁷ *ibid*, para 19.

¹⁰⁸ *ibid*.

3.35 The 2016 Concluding Observations also remind the UK of [the open letter of 16 of May 2012](#) to State parties on economic, social, and cultural rights in the context of the economic and financial crisis, with regard to the criteria for austerity measures. This document recognises that States might adjust the implementation of the Covenant according to its available resources, but this ought never to violate the Covenant's substantive obligations. The CESCR requires all State parties to take appropriate policies in times of economic downturn and continue to ensure the progressive realisation of socio-economic rights for all.¹⁰⁹

Legal Aid Restrictions

3.36 Under the Covenant's obligations, State parties must abide by the provision of judicial remedies to the violations of rights that are justiciable under the national legal system.¹¹⁰ The Committee also recognises that judicial remedies must be available to *all* comply with the non-discrimination principle.¹¹¹ In this regard, the CESCR has raised concerns in the past reporting cycles on a few occasions.

3.37 In 1997, the Concluding Observations point out that the government had been restricting access to free legal aid to several socio-economic rights.¹¹² Almost the same concern is raised again in 2016 when the CESCR asserts the inadequacy of the legal aid system and the tribunal fees since they jeopardise the ability of many to access legal aid in the protection of the right to work, housing, education, and social security benefits.¹¹³

¹⁰⁹ United Nations Office of the High Commissioner, 'Letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights' (16 May 2012) CESCR/48th/SP/MAB/SW.

¹¹⁰ CESCR, 'General Comment No 3: The Nature of State Parties' Obligations (Art 2, Para 1, of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 5.

¹¹¹ *ibid.*

¹¹² CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 9.

¹¹³ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 20.

4 Non-Discrimination

4.1 Article 2(2) of the ICESCR outlines the obligation of States to guarantee that rights are exercised without discrimination as to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The Committee’s [General Comment No 20](#) expands on this, noting that “other status” may include (though is not limited to) disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation.¹¹⁴ Further, the Committee stresses the importance of the principle as an “immediate and cross-cutting obligation”,¹¹⁵ indicating the need to consider non-discrimination in relation to each substantive right. It also emphasises ensuring substantive equality: this means not merely eliminating formal discrimination within State laws and policy but also paying attention to groups that suffer historical or persistent prejudice and adopting positive measures to remove conditions that perpetuate de facto discrimination.¹¹⁶

¹¹⁴ CESCR, ‘General Comment No 20 Non-discrimination in Economic, Social and Cultural Rights’ (2 July 2009) UN Doc E/C.12/GC/20 paras 27-35.

¹¹⁵ CESCR, ‘General Comment N. 20 Non-discrimination in Economic, Social and Cultural Rights’ (2 July 2009) UN Doc E/C.12/GC/20 para 7.

¹¹⁶ CESCR, ‘General Comment No 20 Non-discrimination in Economic, Social and Cultural Rights’ (2 July 2009) UN Doc E/C.12/GC/20 paras 8-9.

4.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016

4.2 The Concluding Observations cover certain standalone issues related to non-discrimination and highlight non-discrimination in relation to each of the substantive rights discussed throughout the rest of the report.

	Negative or insufficient developments
	Topic discussed with no positive or negative judgement
	Positive developments

Right	Issues Raised by Committee	Concluding Observation: Cycle and Year						
		VI 2016	V 2009	IV 2002	III 1997	II 1994	II 1985	I 1981
Article 2- inequality and non- discrimin ation	General discrimination and progressive realisation						-	-
	General discrimination based on race, including nationality	-				-		
	Discrimination against disabled people							
	Discrimination based on gender / sex							

Table 2: Overview of issues raised by the Committee in each Concluding Observation, since the first periodic review in 1981.

General Discrimination and Progressive Realisation

4.3 The Committee's attitude towards sufficiency of legislation for protection against discrimination changes over time, though they consistently state concerns on general discrimination. In 1994, they noted that it was clear that economic and social difficulties continued to be faced by the most vulnerable segments of society.¹¹⁷ Language around this issue strengthened and became more specific in 1997, when they reported a "significant degree" of de facto discrimination against "women, Blacks and other ethnic minorities", despite the

¹¹⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 6.

“elaborate machinery and legislation for protection against discrimination”.¹¹⁸ This continued in 2002, noting the “persistence” of de facto discrimination in various fields of some marginalised and vulnerable groups, especially ethnic minorities and disabled people.¹¹⁹ Whilst in 2002, they “regret the unwillingness” of the UK to adopt comprehensive legislation on equality, there were positive developments in 2009 when they welcomed the introduction of the Equality Bill.¹²⁰ However, they were concerned that the Bill did not provide protection from all forms of discrimination and would not apply to Northern Ireland. They also continued to note the de facto discrimination experienced by disadvantaged and marginalised individuals, again specifying ethnic minorities and disabled people.¹²¹ These specific concerns were repeated in 2016 after the Equality Act 2010 was passed: they noted that some of the provisions of the Equality Act 2010 that enhance rights protection without discrimination were not yet in force – particularly with regards public authorities considering socioeconomic disadvantage and prohibiting intersectional discrimination; further, the Act is not applicable in Northern Ireland and does not include all prohibited grounds of discrimination, such as national or social origin.¹²²

Discrimination based on Race

4.4 General discrimination faced by ethnic minorities has been raised by the Committee in 1997, 2002 and 2009, as discussed in the paragraph above, as well as in relation to substantive rights in most years as discussed throughout this report. Additionally, in 2009, the Committee noted specific concerns on the discriminatory impact of some counter-terrorism measures on

¹¹⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, 13.

¹¹⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 14.

¹²⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 6.

¹²¹ *ibid* para 23.

¹²² CESCR, 'Concluding Observations on the Sixth periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 22.

certain groups, in particular ethnic and religious minorities.¹²³ This is a long-standing issue, with the UK representatives in the 1980s giving some background on the matter: in 1985 the representative stated that racial discrimination existed “in the same manner that crime existed, and it was the policy of the Government to eliminate it”,¹²⁴ whilst in 1981, the representative noted that British society was changing “and had become multiracial in recent years”, with the government “wholly committed to equality before the law regardless of race”, explaining some of the specific race-relation acts.¹²⁵

Discrimination based on Disability

4.5 The issue of discrimination against disabled persons has only been raised specifically in two instances: in 1994, when the Committee expressed concern regarding the lack of a comprehensive anti-discrimination legislation¹²⁶, as indicated in paragraph 4.7; and in 2009, when the Committee voiced a general concern over the continued presence of de facto discrimination in the UK against, *inter alia*, disabled persons, despite the presence of extensive legal and institutional mechanisms. At the time, the Committee also noted that the Equality Bill (as it then was) did not incorporate “all forms of discrimination in all areas” according to ICESCR and did not apply to Northern Ireland.¹²⁷

¹²³ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 17.

¹²⁴ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 7

¹²⁵ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 9.

¹²⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 12.

¹²⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 16.

Discrimination based on Gender/Sex

4.6 Apart from the General Comments regarding discrimination dealt with above and throughout the report, issues of gender-based discrimination have explicitly been raised by the Committee several times, starting from 1981, it was informed that complaints to the Equal Opportunities Commission established under the Sex Discrimination Act 1915 had fallen between 1976 and 1979, and more than half of the complaints made thereto in 1979 were found to have been resolved before they reached the tribunal.¹²⁸ Though the Sex Discrimination Act 1915 did not apply to Northern Ireland, it was said to have “similar regulations of its own”, and data about the functioning of the Equal Opportunities Commission from Northern Ireland was provided, based on a 1979 report.¹²⁹ It was stated that while the proportion of women in the workforce had “risen steadily” since the Second World War, the sectors of employment where women were most heavily represented had recorded stagnant or declining growth.¹³⁰ It was observed that “all managers of labour exchanges were duty bound to ... advise both employers and employees of the operation of the Sex Discrimination Act [1915].”¹³¹ Notably, the higher rate of unemployment benefit for men and single women was sought to be justified on the grounds that men and single women were principal breadwinners, whereas married women had another breadwinner in the household, which was admitted to be “hard to reconcile with the Sex Discrimination Act [1915].”¹³² In 1985, the government sought to demonstrate positive action on its part with regard to addressing sex discrimination by indicating a rise in the number of special training bodies for women.¹³³ While it was admitted that it would “be a very long time before women caught up with men in various fields”,¹³⁴ the government underscored both the fact that it had been acting to “remedy the situation” and would continue to do so.¹³⁵ However, when asked if positive action had been taken on the part of employers, the government stated that while it “welcomed” such efforts, “it was limited by law to provision of

¹²⁸ CESCR, ‘Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights’ (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 4.

¹²⁹ *ibid* para 34.

¹³⁰ *ibid* para 36.

¹³¹ *ibid*.

¹³² *ibid* para 43.

¹³³ CESCR, ‘Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights’ (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 4.

¹³⁴ *ibid*.

¹³⁵ *ibid*.

training and encouragement.”¹³⁶ Any other effort at positive discrimination, the government stated, would “defeat the very aim of removing discrimination”.¹³⁷ Attention was also drawn to the promulgation of the Sex Discrimination Act 1975, though it was characterised as having primarily been brought about by “domestic pressure” rather than as an effect of the UK’s membership in the European Economic Community.¹³⁸ Finally, attention was drawn to the two judgments of the Employment Appeal Tribunal that had a positive impact on the removal of discrimination against married women and single women with children.¹³⁹

4.7 From 1994 onwards, attention is given to questions of sex- and gender-based discrimination has been more diffuse. In 1994, the Committee expressed concern over the lack of comprehensive legislation that provided protection against forms of discrimination envisaged under the ICESCR, despite government initiatives to introduce some anti-discrimination laws.¹⁴⁰ Concern was also expressed about the exclusions and exemptions that formed part of such laws that tended to discriminate against women.¹⁴¹ The Committee recommended that such comprehensive legislation be enacted, especially to address “all forms of discrimination against women”.¹⁴² In 1997, the Committee merely noted a “significant” prevalence of “de facto discrimination”, as evidenced by a lack of representation in managerial positions, disproportionate numbers in lesser-paid and part-time jobs, and higher unemployment rates.¹⁴³ The government was consequently enjoined to take “more effective steps” to prevent such discrimination.¹⁴⁴ Finally, in 2009, with regards to sex- and gender-based discrimination, the Committee first commended the United Kingdom’s ratification of the

¹³⁶ *ibid.*

¹³⁷ *ibid.*

¹³⁸ *ibid* para 10.

¹³⁹ *ibid* para 15.

¹⁴⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 12.

¹⁴¹ *ibid* para 24.

¹⁴² *ibid* para 35.

¹⁴³ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 12.

¹⁴⁴ *ibid* para 24.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2005¹⁴⁵ and thereafter expressed concern about the government raising the age at which foreign partners could join their British partners, which was found to particularly have a discriminatory effect on women.

¹⁴⁵ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 8.

5 The Right to Work

5.1 This section covers matters related to the **right to work provisions within ICESCR (Articles 6, 7, 8)**. In the Committee’s [General Comment No 18](#) on the Right to Work, the rights are described as “interdependent”,¹⁴⁶ being “essential for realising other human rights and an inseparable part of human dignity.”¹⁴⁷

5.2 **Article 6 covers the right to work and the positive obligation on States to safeguard this right**, which requires “technical and vocational guidance and training programmes, policies and techniques”.¹⁴⁸ Such action is viewed as critical for realising the right to work, as the Committee states that implementation of training plans is a specific legal obligation in [General Comment No 18](#).¹⁴⁹ Further, the Committee defines **the “core obligation” of Article 6 as ensuring non-discrimination and equal protection** of employment.¹⁵⁰

5.3 **Article 7 enshrines the right to just and favourable conditions of work** covering remuneration (equal pay for equal work, sufficient to afford a decent living), safe and healthy working conditions, equal opportunity for all, and rest and leisure provisions. This is seen as a non-exhaustive list with other elements also relevant, including harassment, social and economic exploitation, and paid parental leave.¹⁵¹ As explained by the Committee, the aim of Article 7 is to develop the individual dimension of the right to work, whilst **Article 8 addresses the collective dimension:**¹⁵² **the right to form and join trade unions** without restriction, and associated rights, including rights of trade unions and the right to strike. These provisions are

¹⁴⁶ CESCR, 'The Right to Work, General Comment No 18: Article 6 of the ICESCR' (6 February 2006) UN Doc E/C.12/GC/18, para 8.

¹⁴⁷ *ibid*, para 1.

¹⁴⁸ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 6 (2).

¹⁴⁹ CESCR, 'The Right to Work, General Comment No 18: Article 6 of the ICESCR' (6 February 2006) UN Doc E/C.12/GC/18, para 27.

¹⁵⁰ *ibid*, para 31.

¹⁵¹ CESCR, ‘General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)’ (27 April 2016) UN Doc E/C.12/GC/23, para 6. Note that parental leave and benefits are dealt with in [Section 6](#) on Social Security and Protection.

¹⁵² CESCR, 'The Right to Work, General Comment No 18: Article 6 of the ICESCR' (6 February 2006) UN Doc E/C.12/GC/18, para 2.

seen by the Committee as a “crucial means” to defend the right to work¹⁵³ as well as just and favourable conditions of work.¹⁵⁴

5.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016

5.4 The table below shows the issues related to Articles 6-8 that were raised within Concluding Observations between 1980 and 2016, categorised into **thirteen main issues**. Overall, in 2016 aside from the observed increase in overall employment rate, **the majority of issues raised in previous years had not been addressed sufficiently and were raised again**, including on unequal employment of marginalised and disadvantaged groups (the most pervasive issue, raised every year), working conditions of migrants, equality of women accessing work as well as in the workplace, minimum wage for young people, and asylum seekers being unable to take up employment.

5.5 Additionally, **two new substantive issues were raised in 2016**: firstly, issues concerning the quality of the work available – the prevalence of part-time work, precarious self-employment, temporary employment, and low-paid jobs – indicating that **although overall employment had increased, this may have been masking deeper issues undermining favourable conditions of work and didn’t necessarily result in an improved standard of living for many people**. Concomitantly, additional restrictions on the rights of workers to seek remedy for issues were raised with concern, particularly on procedural requirements limiting the right of workers to undertake industrial action and prohibiting blacklisting of trade union members.

5.6 **Only two issues had been raised in previous years and were not raised in 2016**: on the right to strike and abolishing the right of employers to grant incentives to employees who do not join unions (raised in 1997 and 2002), and health and safety in the workplace (raised in 1985).

¹⁵³ *ibid*, para 48, 54.

¹⁵⁴ CESCR, ‘General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)’ (27 April 2016) UN Doc E/C.12/GC/23, para 2.

5.7 In terms of differences between areas, the 2016 Concluding Observations noted that the gender pay gap was particularly significant in Scotland, whilst the national minimum wage in London is less likely to enable a decent standard of living. Aside from this, no reference was made to disparities between nations or regions, as was the case in 2009 and 2002.

	Negative or insufficient developments
	Topic discussed with no positive or negative judgement
	Positive developments

Rights	Issues Raised by Committee	Concluding Observations: Cycle and Year						
		VI 2016	V 2009	IV 2002	III 1997	II 1994	I 1985	I 1981
Article 6- right to work	Unemployment- high rate					-		
	Unemployment- disproportionately affects marginalised groups							
	Asylum seekers- restrictions accessing employment			-	-	-	-	-
Article 7- just and favourable conditions of work	High incidence of part-time work, precarious self-employment, temporary employment, zero hours contracts, low-paid jobs			-	-	-	-	-
	Health and safety in the workplace	-	-	-	-	-		-
	Working conditions of migrant workers- discrimination, low-paid work, risk of abuse			-	-	-	-	-
	National minimum wage insufficient for decent standard of living		-		-	-	-	-
	Minimum wage disparities for young people				-	-	-	-
	Inequality of women accessing work as well as in the workplace			-				
Article 8- trade union and labour rights	Right to undertake industrial action limited by procedural requirements		-	-	-	-		-
	Right to strike without losing employment	-	-			-		-
	Right of employers to grant incentives to employees who don't join unions	-	-	-		-	-	-

Table 3: Overview of issues related to work raised by the Committee in each Concluding Observation since the first periodic review in 1981.

Unemployment

5.8 In 2016, the Committee noted that the overall employment rate had improved,¹⁵⁵ a positive development since 2009 when they noted concern about the “substantial number of persons unemployed”.¹⁵⁶ Previously, aside from brief positive mentions welcoming the “welfare to work initiative” in 1997¹⁵⁷ and commending the “New Deal programme for employment” in 2002,¹⁵⁸ the employment rate had not been mentioned since the 1980s. In both 1981 and 1985, questions were raised about the high level, though it was also noted that a range of measures was being taken to tackle this¹⁵⁹ despite the government stating that “it did not believe that it was its responsibility to guarantee a job for everyone”.¹⁶⁰

Low-Quality and Poorly Paid Work

5.9 Although the employment rate is often examined in Concluding Observations, in its separate statements, the Committee consistently emphasises that this should not be the sole or primary factor determining whether a State is complying with its obligations under ICESCR Article 6. [General Comment No 18](#) outlines that “work as specified in article 6 of the Covenant must be *decent work*”, recognising the linkages with the right to just and favourable conditions of work under Article 7 and the need for work to provide an income allowing workers to support

¹⁵⁵ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 29.

¹⁵⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 20.

¹⁵⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 4 (a).

¹⁵⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 6.

¹⁵⁹ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 12; CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 17.

¹⁶⁰ *ibid*, para 12; *ibid*, para 11.

themselves.¹⁶¹ Further, the Committee stresses that the increasing complexity of work contracts may lead to insufficient protection of ICESCR Article 7 rights even in times of economic growth, and complementary measures may be necessary where workers have precarious contracts.¹⁶²

5.10 In line with this approach, in 2016, for the first time the Committee noted “concern” on the generally high incidence in the UK of part-time work, precarious self-employment, temporary employment, the use of “zero hours contracts”, and low-paid jobs, and the impact of these on Article 7 rights.¹⁶³ This appeared to be a reversal from positive progress noted in 2009 when the Committee made a general comment that their “welcome” measures had led to *inter alia* “improved conditions of work”.¹⁶⁴

5.11 Whilst the Committee included part-time work amongst negative developments observed in 2016, in 1985, the UK government reported part-time work as an economic measure to relieve unemployment, stating that this helps encourage flexible patterns of working and inducing employers to split full-time jobs into two part-time jobs.¹⁶⁵ Indeed, part-time work can provide flexibility and benefits employees if work is suitable to their lived realities; however, part-time work that is designed only to support the needs of employers can result in precarious working conditions and a lack of financial stability.¹⁶⁶

¹⁶¹ CESCR, 'The Right to Work, General Comment No 18: Article 6 of the ICESCR' (6 February 2006) UN Doc E/C.12/GC/18, para 7.

¹⁶² CESCR, 'General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)' (27 April 2016) UN Doc E/C.12/GC/23, para 3.

¹⁶³ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 31.

¹⁶⁴ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 7.

¹⁶⁵ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 12; 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 11.

¹⁶⁶ Young Women's Trust, '[One Size Fits No One](#)' (26 November 2021) accessed 15 January 2022.

Unemployment Disproportionately Affecting Certain Groups

5.12 A further key issue related to the employment rate – that is noted by the Committee as the “core obligation” of the right to work – is ensuring non-discrimination of employment, including implementing a national employment strategy targeting disadvantaged and marginalised groups, as well as defining indicators and benchmarks that can be measured and periodically reviewed.¹⁶⁷ This is stressed as a priority even in times of severe resource constraints, with low-cost measures still required.¹⁶⁸

5.13 The UK appeared to fall short of this requirement in 2016, with the Committee noting concern that certain groups continued to be disproportionately affected by unemployment, including persons with disabilities, young people and persons belonging to ethnic, religious or other minorities.¹⁶⁹ Lower employment amongst certain population groups is a pervasive issue, raised every year since 1985, though the particular groups identified as affected have developed slightly over time.

5.14 In 2009 and 2002, the Committee referred to unequal unemployment of ‘marginalised groups’, mentioning people with disabilities and ethnic minorities, though not young people.¹⁷⁰ In 1985-1997, discrimination based on race and sex was discussed. This included “women, Blacks and other ethnic minorities” identified as groups facing “*de facto* discrimination” in employment, with women occupying a lower percentage of managerial jobs and a disproportionate percentage of lower paid jobs and part-time work, and ethnic minorities as well as Catholics in Northern Ireland having a substantially higher rate of unemployment.¹⁷¹

¹⁶⁷ CESCR, 'The Right to Work, General Comment No 18: Article 6 of the ICESCR' (6 February 2006) UN Doc E/C.12/GC/18, para 31.

¹⁶⁸ *ibid*, para 12.

¹⁶⁹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 29.

¹⁷⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 14; CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 16, 20.

¹⁷¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great

Similarly, in 1994, groups identified were “certain minority groups” with differences also identified between men and women,¹⁷² whilst in 1985 measures to increase the proportion of women in the workplace and combat racial discrimination in employment were discussed.¹⁷³ In 1981, high unemployment among young people was noted, though the disparity of employment was not considered in-depth.¹⁷⁴

5.15 In 1997, the Committee took note of proposals to give positive support to employment through Training and Enterprise Councils, with increased targeting of ethnic minorities.¹⁷⁵ However, since 1997, issues related to training, technical and vocational education have not been mentioned by the Committee in subsequent Concluding Observations, despite the importance given in General Comments and within Article 6 itself, and their impact on equality of work opportunities for different population groups. The lack of inclusion within Concluding Observations was despite the issue being raised by the Durham Human Rights Centre in the 2016 shadow report in relation to lower-skilled individuals and disabled persons,¹⁷⁶ as well as by the Human Rights Consortium (HRC) in relation to programmes aiming to support care leavers.¹⁷⁷

Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 12, 22.

¹⁷² CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 10.

¹⁷³ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, paras 4-9.

¹⁷⁴ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 17.

¹⁷⁵ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 5 (c).

¹⁷⁶ Durham Human Rights Centre, 'Benefit Sanctions in the North East of England, Parallel Report to the Committee on Economic, Social and Cultural Rights for the Examination of the UK's 6th Periodic Report' (April 2016) 10.

¹⁷⁷ Human Rights Consortium, 'Submission from the Human Rights Consortium to the United Nations Human Rights Committee on Economic, Social and Cultural Rights (CESCR's) Review of the UK's 6th Periodic Report' (April 2016) 28.

Equality of Women Accessing Work and in the Workplace

5.16 The Committee has outlined the general need for a system to ensure equal opportunities and treatment between men and women by ensuring equal pay for equal work, as well as ensuring pregnancies are not an obstacle to employment.¹⁷⁸ However, as discussed above, women were noted to face *de facto* discrimination accessing work between 1985 and 1997. In addition, equality between men and women in terms of the type of work accessed and in the workplace was raised every year except for 2002.

5.17 In 2016, three key issues were highlighted: the “persistent underrepresentation of women in decision-making positions”, significant gender pay gap, and women being more likely to be affected by the high incidence of part-time work, precarious self-employment, temporary employment, use of zero hours contracts, low-paid jobs.¹⁷⁹ This indicates a potential reversal in progress: although equality between men and women in the workplace was raised in 2009, this was specifically with regards eradicating the wage gap, particularly in part-time work and in the private sector,¹⁸⁰ whereas the issue was not mentioned at all in 2002.

5.18 In 1985-1997, issues discussed largely concerned the disproportionate underrepresentation of women in managerial positions, and similar to 2016, the higher proportion of women in lower paid occupations and part-time work. Indeed, in 1985, it was reported that it would “still be a very long time before women caught up with men in various fields”, and part-time work was encouraged by the government as a social measure to help women with domestic responsibilities.¹⁸¹ The issue of employers being able to unfairly dismiss pregnant women was

¹⁷⁸ CESCR, 'The Right to Work, General Comment No 18: Article 6 of the ICESCR' (6 February 2006) UN Doc E/C.12/GC/18, para 13.

¹⁷⁹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 27.

¹⁸⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 18.

¹⁸¹ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 4.

also raised. In 1981, it was claimed that the number of complaints from women regarding sex discrimination was falling, though aside from this note, this was not discussed in detail.¹⁸²

5.19 Although the issue of women being more likely to be affected by a high incidence of low-paid jobs in the 2016 Concluding Observations, root causes of this, such as segregation during training opportunities, have not been discussed since 1985.¹⁸³ This is despite the Committee stating a need to pay particular attention to address occupational segregation by sex in [General Comment No 23](#)¹⁸⁴ as well as a 2016 Shadow Report by Engender discussing that in Scotland's Modern Apprenticeship programme, women were being concentrated in 'stereotypically female frameworks' whilst men were more likely to participate in industries such as engineering, construction and plumbing with better rates of pay.¹⁸⁵

Asylum Seekers and the Right to Work

5.20 In 2016, the Committee noted that asylum seekers face restrictions accessing employment whilst claims are being processed and encouraged the state to ensure this did not continue,¹⁸⁶ an issue that had already been raised in 2009.¹⁸⁷ This forms part of wider concerns on the challenges faced by asylum seekers in the enjoyment of economic, social, and cultural rights. The Committee establishes the importance of asylum seekers not being deprived of work unfairly in [General Comment No 18](#), underlying the principles of respect for the individual and their dignity, as well as its importance for social and economic inclusion.¹⁸⁸

¹⁸² CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 4.

¹⁸³ Para 4, 9, 13

¹⁸⁴ CESCR, 'General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)' (27 April 2016) UN Doc E/C.12/GC/23, para 47 (a).

¹⁸⁵ Engender, 'United Nations International Covenant on Economic, Social and Cultural Rights Shadow Report' (April 2016) 4.

¹⁸⁶ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, paras 24-25.

¹⁸⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 27.

¹⁸⁸ CESCR, 'The Right to Work, General Comment No 18: Article 6 of the ICESCR' (6 February 2006) UN Doc E/C.12/GC/18, para 4.

Minimum Wage

5.21 In 1997, the Committee took note of the proposal to introduce the minimum wage,¹⁸⁹ which was later implemented through the 1998 National Minimum Wage Act. In 2016, the Committee noted concern that the minimum wage was insufficient despite a recent increase.¹⁹⁰ Aside from 2016, the only other mention of the amount of minimum wage was in 2002, when similar language was used to express concern that it was not sufficient to provide an adequate standard of living,¹⁹¹ indicating that although positive progress may have been made between 2002 and 2009, this reversed in 2016. As per [General Comment No 18](#), the Committee stipulates that minimum wage should be periodically reviewed and indexed at least to the cost of living (para 20), and although it may be frozen during times of economic and financial crisis, this should be a last resort and a temporary measure only.¹⁹²

Minimum Wage for Young People

5.22 A similar reversal in positive progress between 2002 and 2016 is apparent with regards to the National Minimum Wage for young people. Prior to April 2016, the National Minimum Wage applied to all workers of “school-leaving age”, though different amounts applied depending on age (see paragraph 5.65).¹⁹³ In 2016, the Committee noted that a minimum wage sufficient for living only applied to workers over the age of 25,¹⁹⁴ whereas in 2009, it applied to workers over the age of 20,¹⁹⁵ which had improved since 2002 when it applied to workers

¹⁸⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 5 (a).

¹⁹⁰ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 36.

¹⁹¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 15.

¹⁹² CESCR, 'General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)' (27 April 2016) UN Doc E/C.12/GC/23, paras 20-21.

¹⁹³ UK Government, 'National Minimum Wage and National Living Wage Rates' <<https://www.gov.uk/national-minimum-wage-rates>> accessed 15 January 2022.

¹⁹⁴ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 36.

¹⁹⁵ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great

over the age of 22.¹⁹⁶ This reversal occurred despite the fact that in 2002, it was specifically stated that the Committee considered the scheme discriminatory on the basis of age and that [General Comment No 23](#) requires that “young workers should not suffer wage discrimination”.¹⁹⁷

Working Conditions of Migrant Workers

5.23 In 2016, the Committee raised the working conditions of migrants, including the “persistent discrimination” faced, the risk of low-paid work, as well as greater risk of abuse working conditions faced by migrant domestic workers.¹⁹⁸ This was also raised in 2009, with the Committee noting the “unsafe working conditions and low wages” of migrant workers, particularly those employed in the fishing industry. Despite the enactment of the Modern Slavery Act 2015 prior to the 2016 review, the Committee noted that this needs to be effectively implemented and provides other specific recommendations on improving complaints mechanisms and inspection mechanisms¹⁹⁹ which stem from their general recommendations on migrant workers made in [General Comment No 23](#).²⁰⁰ Although not referenced by the Committee, it is worth noting that the UK has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.²⁰¹

Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 41.

¹⁹⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 14, 15.

¹⁹⁷ CESCR, 'General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)' (27 April 2016) UN Doc E/C.12/GC/23, para 47 (b).

¹⁹⁸ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 34.

¹⁹⁹ *ibid*, para 35.

²⁰⁰ CESCR, 'General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)' (27 April 2016) UN Doc E/C.12/GC/23, para 47 (e), (f).

²⁰¹ OHCHR, 'UN Treaty Body Database: Ratification Status for United Kingdom of Great Britain and Northern Ireland' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185> accessed 15 January 2022.

Right to Form and Join Trade Unions and Associated Rights

5.24 The importance of trade union rights, freedom of association and the right to strike is emphasised by the Committee in General Comments as a crucial means of defending the right to work and just and favourable conditions of work.²⁰² In 2016, concomitant with the noted increase in poor-quality and low paid work as well as insufficiency of the minimum wage (see paragraphs 5.105.65), the Committee expressed “concern” over new limits on rights of workers to undertake industrial action due to the introduction of the Trade Union Act 2016, as well as the prohibition on blacklisting trade union members resulting from issues implementing the Employment Relations Act 1999.²⁰³

5.25 Further specific limits on Trade Unions are explained by Engender in their 2016 Shadow Report, including capping the proportion of the civil service pay bill that can be spent on trade union facility time, restricting civil service union reps, and prohibiting time off for union reps.²⁰⁴ Further, the Equal Rights Trust reported that the Deregulation Act 2015 resulted in limiting employment tribunals’ freedom, particularly with regard to remedies provided, weakening the ability to tackle discrimination in the workplace.²⁰⁵

5.26 Prior to 2016, trade union matters (aside from the right to strike; see below) had not been mentioned since 1997, when the Committee stated that the practice of allowing employers to give raises to employees who don’t join a union was incompatible with ICESCR Article 8.²⁰⁶ In 1985, the UK representative stated that the Trade Union Act 1984 did not hamper the

²⁰² CESCR, ‘General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)’ (27 April 2016) UN Doc E/C.12/GC/23, para 1; CESCR, ‘The Right to Work, General Comment No 18: Article 6 of the ICESCR’ (6 February 2006) UN Doc E/C.12/GC/18, para 48, 54.

²⁰³ CESCR, ‘Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’ (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 38-39.

²⁰⁴ Engender, ‘United Nations International Covenant on Economic, Social and Cultural Rights Shadow Report’ (April 2016) 8.

²⁰⁵ Equal Rights Trust, ‘Alternative Report Submitted to the Committee on Economic, Social and Cultural Rights at its 58th Session in Relation to the Sixth Periodic Report Submitted by: the United Kingdom of Great Britain and Northern Ireland’ (May 2016).

²⁰⁶ CESCR, ‘Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories’ (12 December 1997) UN Doc E/C.12/1/Add.19, para 11.

freedom of trade unions to organise industrial action, and there was nothing in the UK legislation to compel strikers to return to work in case of strikes.²⁰⁷

Right to Strike

5.27 In 1997, the Committee stated that the failure to incorporate the right to strike into domestic law constituted a breach of ICESCR Article 8 rights and did not think the proposal to enable employees to have a remedy before a tribunal for unfair dismissal was a satisfactory approach.²⁰⁸ This comment was reiterated in 2002.²⁰⁹

5.2 Developments since 2016

5.28 Since 2016, the major contextual change affecting ICESCR Article 6-8 rights has been **COVID-19, which has exacerbated the pre-existing inequities** highlighted by the Committee and civil society during the sixth periodic review of ICESCR. Sector shutdowns, financial loss, risk of unemployment, and health and safety risks have impacted the groups that were already highlighted as disadvantaged by the Committee: young people, certain ethnic minority groups, disabled people, female workers, as well as the lowest paid and those in precarious work (see paragraphs 5.39 and 5.43).

5.29 Whilst **Brexit** has generated significant discussion about future potential changes, the impacts on Articles 6-8 remain to be seen with no immediate drastic changes to legislation (see paragraph 5.35). However, **there appear to be risks for future progressive realisation:** firstly, as legislation and case law could diverge from existing retained EU law; and secondly,

²⁰⁷ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 21-23.

²⁰⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 11.

²⁰⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 16.

as the EU has previously been critical to promoting workers' rights, particularly in Northern Ireland (see paragraphs 5.36 and 5.38).

5.30 As regards the issues highlighted in previous Concluding Observations, many remain unaddressed; notably, there has been **no significant action on the right to work of asylum seekers or to remedy the work-related disadvantages faced by migrant workers** (see section 5.2.11). Whilst the overall unemployment rate has improved, and there have been some positive decreases in the gender and disability employment gaps, the COVID-19 pandemic appears to have **widened the ethnicity employment gap**; similarly, **the youth employment gap has not significantly improved** (see section 5.2.4). The gender pay gap has improved, though gender-based segregation within the workplace does not appear to be addressed through current apprenticeship schemes (see section 5.2.7). Further, **a shift to focusing on “decent work” does not appear to have not occurred**, as despite publishing the *Good Work Plan*, the government has not implemented commitments; it has also been argued that wider social policies have played an increasing role in contributing to the issue of poor-quality work (see section 5.2.6). The minimum wage has increased though it still discriminates by age despite previous Committee recommendations.

5.31 Additionally, issues not mentioned previously have gained prominence in recent years, including the **right to work of those without regular immigration status, discrimination** faced within the workplace, **bullying and harassment** in the workplace, and **health and safety conditions** given the COVID-19 pandemic (see sections 5.2.3, 5.2.105.2.9, 5.2.105.2.3).

5.2.1 Context

Devolution

5.32 Employment policies related to social security and employment protection are **a non-devolved responsibility (reserved)**, except for in Northern Ireland where the Northern Ireland Assembly can legislate separately.²¹⁰ However, **youth and adult skill development has been devolved since 1999**, resulting in much greater differences in the provision of skills and employability services than in the employment field.²¹¹

Brexit

5.33 Sections 2 and 3 of the EU (Withdrawal) Act 2018²¹² stipulate that **the majority of existing EU legislation²¹³ that was directly applicable or had direct effect in the UK before 31 December 2020 continues to apply in the UK (“retained EU legislation”)**, whilst Section 4 of the 2018 Act continues to recognise in domestic law the rights and obligations arising under EU law. Retained EU legislation includes regulations and treaties (with the exception of the Treaty of the Functioning of the EU); although it does not include directives, member states are required to enact legal measures to incorporate these, so the content of existing directives should already be reflected in UK domestic legislation.

5.34 The EU-UK Trade and Cooperation Agreement has applied provisionally since January 2021 and entered into force on 1 May 2021, under which **the UK (either Westminster for England, Scotland and Wales, or the Northern Ireland Assembly) can now establish its own employment legislation**. However, the Agreement included a “non-regression clause” for labour and social protection (Article 387²¹⁴), which means that although the UK no longer needs to keep all EU employment laws, **it cannot reduce the level of existing labour and social protection in such a manner as to affect trade or investment**, with the aim to avoid distorting

²¹⁰ Cabinet Office, ‘Guidance on Devolution’ (*UK Government*, February 2013)

<<https://www.gov.uk/guidance/guidance-on-devolution#devolved-responsibilities>> accessed 10 December 2021.

²¹¹ JRF, ‘[The Impact of Devolution: Employment and Employability](#)’ (January 2010) 8.

²¹² As amended by the EU (Withdrawal Agreement) Act 2020.

²¹³ Schedule 6 of the Act defines EU instruments exempt from retained EU law, whilst Schedule 5 gives power to Ministers to create exceptions from the duty to publish existing EU law.

²¹⁴ Trade and Cooperation Agreement between the EU and the UK [2021] L 149/10 <[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:2021A0430\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:2021A0430(01)&from=EN)> accessed 4 December 2021.

EU competition. These protections include fundamental rights at work, health and safety standards, fair working conditions, employment standards, information and consultation rights, and the restructuring of undertakings (Article 386²¹⁵).

5.35 Although it remains to be seen how the non-regression clause will operate in practice, it is only triggered when EU-UK trade or investment is impacted, so other changes to employment legislation that affect ICESCR Articles 6-8 may pass uncontested. Indeed, with regards to employment, **analysts expect “creeping change” in the form of legislative tweaks and a slow divergence in case law rather than immediate drastic impacts.**²¹⁶ Further, the UK does not need to implement any new EU legislation, which has previously been critical to promoting workers’ rights: the Human Rights Consortium have stated that “EU law has been so influential in the area of worker’s rights in Northern Ireland that it creates a form of super-constitutional law”.²¹⁷ There may be divergence between Northern Ireland and the rest of the UK in this matter, as the Northern Ireland Protocol provides extra protection against discrimination and requires Northern Ireland to on keep par with EU developments.²¹⁸

5.36 ICESCR Article 6-8 rights could further be affected as although UK Courts now “have regard” to CJEU case law, it will no longer be on a statutory footing.²¹⁹ Previously, UK courts have used Directives to aid the construction of the Equality Act 2010 and other domestic legislation in favour of indirect discrimination cases,²²⁰ for example the cases of *Essop* and *Naeem*,²²¹ further highlighting the role played by EU law in progressive realisation. Finally, the EU Charter of Fundamental Rights is no longer applicable, including Article 31, which elaborates on fair and just working conditions for workers. **Overall, these factors indicate that**

²¹⁵ *ibid.*

²¹⁶ Eversheds Sutherland, ‘Beyond Brexit: Employment Rights and the UK-EU Trade Agreement’ (January 2021) <https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Employment_and_labour Law/employment-rights-UK-EU-trade-agreement> accessed 4 December 2021.

²¹⁷ Human Rights Consortium, ‘[Rights at Risk: Brexit, Human Rights and Northern Ireland](#)’ (January 2018) 108.

²¹⁸ Women’s Policy Group NI, ‘[NI COVID-19 Feminist Recovery Plan: Relaunch One Year On](#)’ (July 2021) 299.

²¹⁹ EU (Withdrawal) Act 2018, s 6(2).

²²⁰ Michael Malone, ‘The Concept of Indirect Discrimination by Association: Too Late for the UK?’ (2017) 46 Industrial Law Journal 144, 161.

²²¹ *Essop and Others v Home Office (UK Border Agency)*; *Naeem v Secretary of State for Justice* [2017] UKSC 27 in which two appeals were heard together by the House of Lords who used EU definitions and explanations of indirect discrimination to interpret the Equality Act 2010.

Brexit could have a negative impact on the progressive realisation of Article 6-8 rights in the future.

5.37 At the time of writing (December 2021), **there had not been any major legislative amendments to retained EU law affecting ICESCR Articles 6-8.** Although the government announced that they would be reviewing employment legislation in January 2021, the review was cancelled following public backlash.²²² However, as mentioned above, there are certain areas of existing EU law that are particularly important to ensuring compliance with Article 6-8 that if amended, could reduce protection for UK workers in the future. This includes:

- EU legislation on health and safety: Directive 89/391/EEC Framework Directive on safety and health at work; Directive 2010/32/EU on the prevention from sharp injuries in the hospital and healthcare sector; Directive 93/103/EC work onboard fishing vessels; Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers.
- EU legislation on equality and non-discrimination: Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000); Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation; Article 157 of the Treaty on the Functioning of the European Union (TFEU) which enshrines the right to equal pay for equal work; Article 19 of the TFEU enables EU institutions to take action to combat discrimination.
- EU legislation on working conditions: Directive 2003/88/EC working time directive (note that initial proposals to review this proved unpopular²²³); Directive 2008/104/EC on temporary agency work, Directive 1999/70/EC concerning the

²²² Laura Kearsley, 'Government Ditches Plans to Review UK Workers' Rights Following Brexit' (*Nelsons Law*, 29 January 2021) <<https://www.nelsonslaw.co.uk/government-review-workers-rights/>> accessed 4 December 2021; Jim Pickard and Peter Foster, 'Kwarteng Confirms Government Review of UK Employment Law' (*Financial Times*, 19 January 2021) <<https://www.ft.com/content/ab8d876c-bc65-441e-8b04-051d3be124c9>> accessed 4 December 2021.

²²³ *ibid.*

framework agreement of fixed-term work; Directive 2019/1158 on work-life balance for parents and carers.

5.38 Finally, Brexit **ended the freedom of movement of British workers within the EU as well as the right of EU citizens to take up work in the UK without discrimination**. This means that within the UK, employers must conduct “right to work” checks prior to employment for most EU, EEA, and Swiss citizens,²²⁴ as was already required for non-EEA citizens. It is thought that this policy can lead to indirect discrimination; although guidance issued by the government states that discrimination should be avoided by conducting checks on all potential employees,²²⁵ cases such as *Badara v Pulse Healthcare Ltd*²²⁶ and *Okuoimose v City Facilities Management (UK) Ltd*²²⁷ have shown that employers can misunderstand the documentary requirements of the right to work checks due to the complexity of the scheme.

COVID-19 Pandemic

5.39 The COVID-19 pandemic led to immediate negative impacts on overall unemployment in the UK, with the unemployment rate increasing from 4.0% in January 2020 to a peak of 5.2% in December 2020.²²⁸ Whilst this negative trend has reversed throughout 2021, and the unemployment rate returned to 4.3% by September 2021, the pandemic has affected deeper structural issues pertaining to access to decent work, most notably **the inequitable effects of shutdowns, lack of support for gig economy and self-employed workers, risks faced by key workers, and new flexible ways of working** (see paragraphs 5.12 and 5.39-5.43). Academics have noted that it is essential to take into account the deep underlying inequalities and policy challenges that preceded the pandemic in order to understand the complex impacts

²²⁴ Home Office, ‘Right to Work Checks: Employing EU, EEA and Swiss Citizens’ (*UK government*, 10 June 2021) <<https://www.gov.uk/guidance/right-to-work-checks-employing-eu-eea-and-swiss-citizens>> accessed 4 December 2021.

²²⁵ Home Office, ‘[Employer Right to Work Checks Supporting Guidance](#)’ (August 2021) 25.

²²⁶ [2019] 6 WLUK 821 (EAT), in which an employer mistakenly believed it could require a negative result from the Home Office Employer Checking Service to evidence the claimant’s right to work, which the court upheld as indirect discrimination.

²²⁷ [2011] UKEAT/0192/11, in which the claimant was suspended without pay due to the employer believing they did not have the right to work, despite having the right through being a family member of an EU national.

²²⁸ ONS, ‘Unemployment Rate (Aged 16 and Over, Seasonally Adjusted)’ (*UK Statistics Authority*, 16 November 2021)

<<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/timeseries/mgsx/lms>> accessed 4 December 2021.

on those already in precarious circumstances;²²⁹ the disparities in employment by age, gender, disability status, ethnicity and geography have already been highlighted in paragraph 5.12 above.²³⁰ Indeed, the key issues arising from the pandemic have all had disproportionate impacts on particular groups of people, indicating that a **potential long-lasting adverse effect may further exacerbate employment and wealth disparities**.

5.40 Firstly, academic and policy-related literature highlights that the **risk of unemployment due to pandemic shutdowns affects certain groups more than others**; these groups largely correspond to those already identified in Concluding Observations as disproportionately unemployed. Research by the Institute of Fiscal Studies shows that **the young and lowest paid** suffered the most damage to their livelihoods due to the pandemic: employees under 25 were two and a half times more likely to work in a shutdown sector than other employees, and low earners were seven times more likely than high earners to work in those sectors.²³¹ They suffered the highest number of job losses and largest losses in income, whilst the highest paid workers experienced little or no financial hardship with their savings often rising during lockdown due to lack of spending opportunities.²³² Separate analysis shows that **at-risk jobs were concentrated in low-paid occupations**, which also correlates with level of education, with evidence indicating that those in the worst-affected sectors and occupations are also likely to face worse employment prospects in the future.²³³ As well as younger workers and those with low incomes, the **self-employed** have also been identified to be more likely to experience a drop in economic activity²³⁴ – particularly women²³⁵ as have **female workers in general and certain minority ethnic groups**,²³⁶ with people from a minority ethnic background “consistently more likely” to have experienced negative financial impacts due to COVID-19

²²⁹ Richard Blundell, Monica Costa Dias, Robert Joyce and Xiaowei Xu, ‘COVID-19 and Inequalities’ (2020) 41 Fiscal Studies 291, 292.

²³⁰ *ibid* 314.

²³¹ Institute for Fiscal Studies, ‘[Sector Shutdowns During the Coronavirus Crisis: Which Workers are Most Exposed?](#)’ (6 April 2020) 2.

²³² *ibid* 10.

²³³ Tera Allas, Marc Canal and Vivian Hunt, ‘[COVID-19 in the UK: Assessing Jobs at Risk and the Impact on People and Places](#)’ (McKinsey & Company, May 2020).

²³⁴ Richard Blundell, Monica Costa Dias, Robert Joyce and Xiaowei Xu, ‘COVID-19 and Inequalities’ (2020) 41 Fiscal Studies 291, 292.

²³⁵ Darja Reuschke et al, ‘[Testing the Differential Impact of COVID-19 on Self-Employed Women and Men in the UK](#)’ (Institute of Labour Economics, March 2021).

²³⁶ *ibid* 298.

and lockdown.²³⁷ Finally, there have also been reports that employers of disabled people did not make reasonable adjustments to allow them to work from home, with **disabled people disproportionately furloughed or made redundant**.²³⁸

5.41 Although the Coronavirus Job Retention Scheme allowed employers to apply for 80% reimbursement of wages (up to £2,500 per month) for employers placed on furlough, this has been criticised for incentivising employers to dismiss vulnerable workers and later reemploy them with new terms and conditions.²³⁹ Additionally, there was confusion over eligibility for self-employed and gig economy workers, with **those in gig economy employment facing particular issues due to a lack of basic rights** such as sick pay, resulting in them needing to continue working. As with shutdown sectors, young people, people of certain ethnic minorities, and people with lower income are over-represented in this group.²⁴⁰

5.42 A third key issue that has arisen due to the pandemic is **the health and safety conditions faced by key workers**, including health and social workers, security and some wholesale and retail. The lack of access to Personal Protective Equipment (PPE) was given much attention early on in the pandemic,²⁴¹ and data from 2020 showed that COVID-19 infection rates were much higher among health and social care workers than others,²⁴² highlighting that the much higher standard required to protect health and safety in certain sectors during the pandemic may have been breached. Additionally, **the inequitable impact is again evident, as key workers are more likely to be lower paid, female and from certain ethnic minority backgrounds**, and research has shown that health impacts are more serious among workers in certain occupations, among ethnic minority groups and in poorer localities.²⁴³

²³⁷ Runnymede Trust, '[Over-Exposed and Under-Protected: The Devastating Impact of COVID-19 on Black and Minority Ethnic Communities in Great Britain](#)' (August 2020) 11.

²³⁸ Disability Rights UK, '[Unequal Impact: Coronavirus \(COVID-19\) and the Impact on People with Protected Characteristics](#)' (April 2020) 6.

²³⁹ Niall O'Connor, 'The Right to Work and Rights in Work During the Coronavirus Pandemic: The Response of the United Kingdom' in Carla Ferstman and Andrew Fagan (eds), *Covid-19, Law and Human rights* (University of Essex School of Law and Human Rights Centre, 2020) 142.

²⁴⁰ Equality and Human rights Commission, '[Evidence to the Business, Energy and Industrial Strategy committee Inquiry on the Impact of Coronavirus on Businesses and Workers](#)' (May 2020) 15.

²⁴¹ *ibid* 17.

²⁴² Richard Blundell, Monica Costa Dias, Robert Joyce and Xiaowei Xu, 'COVID-19 and Inequalities' (2020) 41 *Fiscal Studies* 291, 302.

²⁴³ *ibid* 304.

5.43 Finally, the pandemic has also highlighted issues around flexible working conditions for those working from home. Some have stated that the right to paid annual leave enshrined in the Working Time Regulations 1998 should be interpreted as preventing employers from insisting that workers take annual leave during the pandemic due to difficulties travelling. O'Connor points out that this issue "might seem insignificant, but there is always the risk that hard-won employment rights will be eroded", considering working time protections are already vulnerable due to Brexit.²⁴⁴

5.2.2 Asylum Seekers and the Right to Work

5.44 In 2016, one of CESCR's recommendations was to allow asylum seekers to access employment while their claims are being processed.²⁴⁵ This has not been implemented: as per the UK government's Immigration Rules published in February 2016, whilst asylum seekers are normally not allowed to work,²⁴⁶ those who have waited over one year for an initial decision on their asylum claim (through no fault of their own) may apply for permission to work²⁴⁷ in graduate level or higher jobs on the UK's shortage occupation list.²⁴⁸ There is no data on the number of asylum seekers actually able to access work, and the policy has been called "illusory" as in practice, bureaucracy and the shortage occupation list restrict meaningful access to work.²⁴⁹ Further, in December 2021, the UK government announced that despite continuous lobbying by civil society, the policy preventing asylum seekers from working would continue.²⁵⁰

²⁴⁴ Niall O'Connor, 'The Right to Work and Rights in Work During the Coronavirus Pandemic: The Response of the United Kingdom' in Carla Ferstman and Andrew Fagan (eds), *Covid-19, Law and Human rights* (University of Essex School of Law and Human Rights Centre, 2020) 141.

²⁴⁵ CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 25.

²⁴⁶ GOV.UK, UKVI Guidance '[Working in the UK while an asylum case is considered](#)', 21 February 2014 (accessed 27 November 2021)

²⁴⁷ GOV.UK, [Immigration Rules Part 11B](#), para 360

²⁴⁸ *ibid*, para 360A.

²⁴⁹ Melanie Gower, '[Asylum Seekers: the Permission to Work Policy](#)' (*House of Common Library*, January 2021) 3.

²⁵⁰ UK Parliament, 'Statement by the Parliamentary under Secretary of State for Justice and Tackling Illegal Migration' (*UK Parliament*, 8 December 2021) < <https://questions-statements.parliament.uk/written-statements/detail/2021-12-08/hcws452>> accessed 15 J n

5.2.3 The Right to Work and Immigration Status

5.45 In recent years, some academics have argued that the right to work enshrined in ICESCR Article 6 has been further breached by the UK's "hostile environment" policies as they effectively discriminate based on immigration status. As per the 2008 Civil Penalty Scheme amended by the Immigration Act 2014 and Immigration Act 2016, the "right to work" policy makes it a crime both to employ someone without the legal right to be in the UK and to work in the UK without legal immigration status ("illegal working").²⁵¹ This includes people who have had their asylum claims refused but are unable or unwilling to return to their country of origin, as well as "irregular migrants" who either do not seek or have not qualified for legal immigration status.

5.46 The right to work policy risks forcing people into poverty and destitution, with some having no choice but to work in the shadow economy,²⁵² leading to potential further violations of Article 7 rights. Indeed, the critique that criminalising people working in violation of immigration rules is likely to make them more vulnerable to exploitation was made throughout the passing of the Immigration Act 2016, as well as subsequently with empirical evidence.²⁵³ Academics have argued that the policy is a response to a governance crisis, attempting to uphold light-touch regulation policies whilst shifting blame onto migrants for the deteriorating conditions for workers in the bottom half of the UK's neo-liberal labour market.²⁵⁴

5.47 Further, the way in which the policy is implemented – through requiring employers to conduct "right to work checks", which in itself is not a legal obligation, but exposes the employers to a £20,000 penalty if a person without legal status is found to be employed²⁵⁵ – can lead to indirect discrimination based on ethnicity and nationality.²⁵⁶ Research has shown that enforcement of the policy disproportionately affects South Asian and Chinese restaurants

²⁵¹ Qureshi et al, '[Beyond the Hostile Environment](#)' (IPPR, February 2021) 12.

²⁵² Qureshi et al, '[Access Denied: The Human Impact of the Hostile Environment](#)' (IPPR, September 2020) 12.

²⁵³ Judy Fudge, 'Illegal Working, Migrants and Labour Exploitation in the UK' (2018) 38 Oxford Journal of Legal Studies 557, 559.

²⁵⁴ Judy Fudge, 'Illegal Working, Migrants and Labour Exploitation in the UK' (2018) 38 Oxford Journal of Legal Studies 557, 571.

²⁵⁵ UK Visas and Immigration, 'An Employer's Guide to Right to Work Checks' (31 August 2021) <<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide/an-employers-guide-to-right-to-work-checks-31-august-2021-accessible-version>> accessed 5 December 2021.

²⁵⁶ Qureshi et al, '[Beyond the Hostile Environment](#)' (IPPR, February 2021) 12.

and takeaways, resulting in both discriminatory and ineffective results.²⁵⁷ Although the level of protection afforded to people without immigration status under the Equality Act 2010 is questionable, as the recent case *Taiwo v Olaigbe*²⁵⁸ confirmed that immigration status is not included within the protected characteristic of nationality, cases of discrimination could still occur if employers target specific people for “right to work checks” based on their appearance or accents.

5.2.4 Unemployment and Unemployment Disproportionately Affecting Certain Groups

5.48 In terms of the general right to work, the Committee recommended that the UK review employment policies to address the root causes of unemployment, as well as develop an action plan focusing specifically on young people, disabled people and ethnic, religious or other minorities.²⁵⁹ For overall access to employment, the Equality and Human Rights Commission assesses progress as “moderate”, largely due to increases in the overall employment rate and narrowing of gender and disability gaps in employment.²⁶⁰ Indeed, in September 2021, the UK unemployment rate was estimated at 4.3%²⁶¹ (in Northern Ireland, 4.1% for June-August 2021)²⁶²; whilst this is slightly worse than the pre-pandemic rate of 4.0%, it has improved throughout 2021 and is an improvement from the September 2016 rate of 4.8%.²⁶³

²⁵⁷ Qureshi et al, ‘[Access Denied: The Human Impact of the Hostile Environment](#)’ (IPPR, September 2020) 13.

²⁵⁸ [2016] UKSC 31

²⁵⁹ Equality and Human Rights Commission, ‘ICESCR Concluding Observations 2016, Paragraph 30’ (EHRC) <<https://humanrightstracker.com/en/un-recommendation/icescr-concluding-observations-paragraph-30/>> accessed 5 December 2021; CESCR, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 30.

²⁶⁰ Equality and Human Rights Commission, ‘Access to Employment- UK Government Assessment’ (EHRC) <<https://humanrightstracker.com/en/progress-assessment/access-to-employment-uk-government-assessment/>> accessed 5 December 2021.

²⁶¹ ONS, ‘Unemployment Rate’ (UK Statistics Authority, 16 November 2021) <<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/timeseries/mgsx/lms>> accessed 5 December 2021.

²⁶² Department for the Economy, ‘Labour Market Statistics’ (Northern Ireland Statistics and Research Agency, 12 October 2021) <<https://www.economy-ni.gov.uk/news/labour-market-statistics-35>> accessed 4 December 2021.

²⁶³ ONS, ‘Unemployment Rate’ (UK Statistics Authority, 16 November 2021) <<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/timeseries/mgsx/lms>> accessed 5 December 2021.

Ethnic Minorities

5.49 Action to ensure unemployment does not continue to disproportionately affect ethnic minorities, as well as address root causes of disparities, has arguably been limited. In 2017, the *McGregor-Smith Review* on race in the workplace was published, which identified issues faced by black and minority ethnic (BME) accessing and progressing in employment, finding discrimination and bias “at every stage of an individual’s career, and even before it begins”,²⁶⁴ as well as recommendations for reversing this. The government response stated that to follow-up on this, the “best method is a business-led, voluntary approach and not legislation”,²⁶⁵ stating that they would call businesses to action and draw attention to the importance of effective diversity policies, encouraging businesses to take on action recommended in the report. This has been criticised as showing a lack of commitment to take concrete action to improve workplace diversity.²⁶⁶

5.50 Similarly, in 2017, the *Parker Review* was published to explore how to improve ethnic diversity of UK boards and included the recommendation to legislate to ensure that companies publish information on the ethnicity pay gap²⁶⁷ (similar to existing requirements on the gender pay gap); although the government consulted on ethnicity pay reporting ending in January 2019, results are yet to be published, and no action has been taken²⁶⁸ despite calls from civil society to review the policy or make reporting mandatory.²⁶⁹ The 2020 *Parker Review Update Report* concluded that the writers “do not believe that sufficient progress has been made”,²⁷⁰ though the role of the government has not been directly discussed.

²⁶⁴ The McGregor-Smith Review, ‘[Race in the Workplace](#)’ (February 2017) 3.

²⁶⁵ Department for Business, Energy & Industrial Strategy, ‘[Government Response to Baroness McGregor-Smith](#)’ (2017) 3.

²⁶⁶ Equality and Human Rights Commission, ‘Access to Employment- UK Government Assessment’ (EHRC) <<https://humanrightstracker.com/en/progress-assessment/access-to-employment-uk-government-assessment/>> accessed 5 December 2021.

²⁶⁷ Sir John Parker, ‘[A Report into the Ethnic Diversity of UK Boards](#)’ (October 2017) 17.

²⁶⁸ Department for Business, Energy & Industrial Strategy, ‘Closed Consultation, Ethnicity Pay Reporting’ (11 October 2018) <<https://www.gov.uk/government/consultations/ethnicity-pay-reporting>> accessed 5 December 2021.

²⁶⁹ CIPD, ‘Make Ethnicity Pay Reporting Mandatory From 2023 to boost Workplace Equality’ (15 September 2021) <<https://www.cipd.co.uk/about/media/press/150921ethnicity-pay-reporting-mandatory#gref>> accessed 5 December 2021; Equality and Human rights Commission, ‘[Evidence to the Business, Energy and Industrial Strategy committee Inquiry on the Impact of Coronavirus on Businesses and Workers](#)’ (May 2020) 22.

²⁷⁰ The Parker Review Committee, ‘[Ethnic Diversity Enriching Business Leadership, An Update Report from the Parker Review](#)’ (February 2020) 11.

5.51 The lack of progress in tackling root causes of employment inequity is evident in disaggregated unemployment figures: since 2016, the difference in unemployment between white communities and all other ethnic minority groups has widened (the “ethnicity employment gap”). In September 2021, the unemployment rate for white ethnic groups was 3.8%, compared to 8.4% for all other ethnic groups (combined). Unemployment was particularly high amongst Bangladeshi (12.3%) and Black/African/Caribbean/Black British (10.2%) groups. In comparison, in September 2016, 4.6% of white groups were unemployed, as were 8.5% of people from all other ethnic groups.²⁷¹ Therefore, in September 2016, the unemployment rate for non-white groups was 1.8 times higher than for white groups, whilst in September 2019 it was 2.2 times higher. This reversal of progress appears attributable to the COVID-19 pandemic: in September 2018, the unemployment rate of non-white groups had dropped to 1.6 times higher than for white groups.²⁷² The disparity between white and all other ethnic groups exists in all regions with the exception of Wales, where unemployment in June 2021 was 4% for both groups.²⁷³

Young People

5.52 Similarly, whilst unemployment in young people has improved since 2016, the disparity with overall unemployment has not decreased significantly. In September 2021, the unemployment rate for young people in the UK was 11.7% (2.7 times greater than overall unemployment), whilst in September 2016 it was 13.3% (2.8 times greater than overall unemployment).²⁷⁴ The lack of progress may be partially attributable to policies on apprenticeships: as noted by the Equality and Human Rights Commission, the government has not met its target for new apprenticeships, with total apprenticeships decreasing since the introduction of the Apprenticeship Levy in 2017.²⁷⁵ Recent research also shows that people

²⁷¹ ONS, ‘Labour Market Status by Ethnic Group’, (*UK Statistics Authority*, 16 November 2021) <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09>> accessed 5 December 2021.

²⁷² *ibid*: in September 2016 the unemployment rate for White ethnic groups was 4.3%, compared to 6.9% for all other ethnic groups combined.

²⁷³ Ethnicity Facts and Figures, ‘Unemployment’ (*UK Gov*, 3 August 2021) <<https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/unemployment-and-economic-inactivity/unemployment/latest>> accessed 10 December 2021.

²⁷⁴ ONS, ‘LFS: Unemployment Rate UK All Aged 16-24 %’ (*UK Statistics Authority*, 16 November 2021) <<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/timeseries/mgwy/lms>> accessed 10 December 2021.

²⁷⁵ Equality and Human Rights Commission, ‘ICESCR Concluding Observations 2016, Paragraph 30’ (*EHRC*)

from black, Asian and mixed ethnic groups continue to be very under-represented in Apprenticeships, and within certain sectors in particular, with little change in participation over the last decade.²⁷⁶ This is reportedly largely due to not being engaged by government awareness campaigns or agencies, and a lack of awareness on where to find information about apprenticeships.²⁷⁷ Indeed, unemployment is particularly problematic for non-white young people: in 2019 the unemployment rate for white 16-24 year olds was 10%, compared to 19% amongst all other ethnic groups. The impact of the £2 billion Kickstart Scheme 2020 (part of the Plan for Jobs 2020 and response to COVID-19 pandemic), which provides placements to those aged 16-24 who are claiming Universal Credit and at risk of long-term unemployment, remains to be seen.

Disabled People

5.53 During the pandemic, there was a widening of the disability employment gap between April and December 2020, though this narrowed again in early 2021.²⁷⁸ Further, since 2016, there have been positive improvements in the disability employment gap: in September 2021, the unemployment rate for disabled people was 7.5% or 1.9 times higher than the unemployment rate for non-disabled people, whilst in September 2016 it 10.0% or 2.2 times higher than the unemployment rate for non-disabled people.²⁷⁹ As with the ethnicity pay gap, it is not a legal requirement to publish disability pay gaps. However, there is evidence that this remains persistent: although in 2018 official government statistics estimated the gap at

<<https://humanrightstracker.com/en/un-recommendation/icescr-concluding-observations-paragraph-30/>> accessed 10 December 2021.

²⁷⁶ BTEG, '[Ethnic Minority Young People and Apprenticeships in England](#)' (July 2021) 1.

²⁷⁷ *ibid* 2.

²⁷⁸ Department for Work and Pensions, 'The Employment of Disabled People 2021' (*UK Gov*, 4 November 2021) <<https://www.gov.uk/government/statistics/the-employment-of-disabled-people-2021/the-employment-of-disabled-people-2021>> accessed 10 December 2021.

²⁷⁹ ONS, 'Labour Market Status of Disabled People' (*UK Statistics Authority*, 16 November 2021) <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08>> accessed 10 December 2021.

12.2%,²⁸⁰ the Trades Union Congress (TUC) estimated the gap to be 15.5% in 2019, 19.6% in 2020 and 16.5% in 2021.²⁸¹

5.2.5 Equal Opportunities in the Workplace

5.54 Although not specifically mentioned in the Concluding Observations, there is an increasing amount of research on discrimination faced within the workplace, covering not just differential employment and pay rates but also issues faced during career progression, segregation in the labour market and treatment in the workplace.²⁸²

5.2.6 Low Quality and Low-Paid Work

5.55 In 2016, the Committee recommended that the UK:

- (a) Reduce the use of temporary employment, precarious self-employment and ‘zero-hours’ contracts; create opportunities offering security and protection of work rights;
- (b) Ensure the work and social security rights of all workers, regardless of contract type, are guaranteed and enforced.²⁸³

²⁸⁰ ONS, ‘Disability Pay Gaps in the UK: 2018’ (*UK Statistics Authority*, 2 December 2019)

<<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/articles/disabilitypaygapinthek/2018>> accessed 10 December 2021.

²⁸¹ TUC, ‘[Disability Pay and Employment Gaps](https://www.tuc.org.uk/research-analysis/reports/jobs-and-recovery-monitor-disabled-workers)’ (November 2020) 3; TUC, ‘Jobs and Recovery Monitor – Disabled Workers’ (9 November 2021) <<https://www.tuc.org.uk/research-analysis/reports/jobs-and-recovery-monitor-disabled-workers>> accessed 10 December 2021. n

²⁸² For example: Wen Wang and Roger Seifart, ‘BAME Staff and Public Service Motivation: The Mediating Role of Perceived fairness in English Local Government’ (2020) 161 *Journal of Business Ethics* 653, which shows that BAME employees in local government perceive unfair treatment of being underpaid, management lacking effort to prevent discrimination, bullying and racism at the workplace; Sam Foster, ‘Promoting an NHS Free of Racial Bias’ (2019) 28 *British Journal of Nursing* 1039, which discusses the issue that black and minority ethnic staff in the NHS report poorer workplace experiences and are more likely to face disciplinary action.

²⁸³ Equality and Human Rights Commission, ‘ICESCR Concluding Observations 2016, Paragraph 32’ (*EHRC*) <<https://humanrightstracker.com/en/un-recommendation/icescr-concluding-observations-paragraph-32/>> accessed 10 December 2021; CESCR, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 32.

5.56 With regards to just and fair conditions at work in general, the Equality and Human Rights Commission assesses progress as ‘limited’.²⁸⁴ In response to the *Taylor Review of Working Practices* in 2017, which emphasised putting quality of work on an equal footing with quantity of work when measuring success,²⁸⁵ the government published the *Good Work Plan* in December 2018. It aims to address quality of work issues, including the lack of income security or cycle of lower-paid work faced in certain sectors, focusing on the self-employed, agency workers and those in the gig economy, as well as consider whether modern employment practices require updating employment laws.²⁸⁶ It has been criticised by academics as the plan for achieving “quality work” largely focuses on developing evaluation metrics to measure the progress of quality work, rather than focusing on the empowerment of workers through trade unions or using international standards relevant to “decent work”, as well as prioritising marketisation in favour of respect for fundamental human rights.²⁸⁷ Further, the government has not responded formally to consultations under the *Good Work Plan* or introduced an Employment Bill to implement commitments.

5.57 It has been suggested by academics that the 2019 *Fair Work Wales*²⁸⁸ report by the Welsh Fair Work Commission is a much more practical and comprehensive plan for promoting fair work, which policymakers across the UK should take on board.²⁸⁹ In particular, this is due to its focus on “fair work” rather than “good work” or “job quality”, emphasising the moral aspect of ensuring basic legal entitlements, equality of pay levels and job security.²⁹⁰ With regards recommendations, it is noted that the report emphasises an active role for government, not just in championing fair work but also ensuring it becomes embedded in policy and practice (rather than the “voluntarism” approach of UK Labour, Conservative and Coalition

²⁸⁴ Equality and Human Rights Commission, ‘ICESCR Concluding Observations 2016, Paragraph 30’ (EHRC) <<https://humanrightstracker.com/en/progress-assessment/just-and-fair-conditions-at-work-uk-government-assessment/>> accessed 4 December 2021.

²⁸⁵ Matthew Taylor, ‘[Good Work: The Taylor Review of Modern Working Practices](#)’ (July 2017).

²⁸⁶ Department for Business, Energy & Industrial Strategy, ‘[Good Work: A Response to the Taylor Review of Modern Working Practices](#)’ (December 2018)

²⁸⁷ Alan Bogg, ‘Escaping Labour Law’s Matrix’ (2019) 5 University of Bristol Law Research Paper Series 1, 8-9; Katie Bales, Alan Bogg and Tonia Novitz, ‘Voice and Choice in Modern Working Practices: Problems with the Taylor Review’ (2018) 47 Industrial Law Journal 46.

²⁸⁸ Fair Work Commission, ‘[Fair Work Wales](#)’ (Welsh government, March 2019).

²⁸⁹ Keith Sisson, ‘The Fair Work Wales Report: A Manifesto for All of Us’ (2019) 50 Industrial Relations Journal 564, 565.

²⁹⁰ *ibid.*

governments)²⁹¹, as well as the role of institutions such as trade unions and social partners (EHCR, Acas and similar).²⁹² Further, the *Fair Work Wales* report notes that some observers believe that the Good Work plan falls short of supporting workers in the gig economy.²⁹³ Indeed, the approach of the *Fair Work Wales* report appears more compliant with the Committee approach increasingly shifting away from focusing merely on employment rates and pay gaps towards realising the “decent work” aspect of Article 6 (for example see paragraph 5.3 above on [General Comment No 18](#) and paragraph 5.8 on the 2016 Concluding Observations recommendations on low-quality and low-paid work).

5.58 Separately, academics have also suggested that government social policies have played an increasing role in contributing to the issue of poor-quality work. In 1997 the welfare-to-work scheme was welcomed by the Committee (see paragraph 5.8), following the 1995 Jobseekers Act which introduced assessing jobseekers’ behaviour for the first time. The Welfare Reform and Work Act 2016 and the Welfare Reform and Work (Northern Ireland) Order 2016 are the latest developments, introducing new limitations, freezes and cuts into the welfare system.²⁹⁴ In general, a welfare-to-work scheme requires people to seek and accept work on the basis that otherwise they will lose access to social support, with such policies often presented as the best route out of poverty.²⁹⁵ However, academic research shows that the UK welfare-to-work system has become moved away from supporting people to find jobs and towards introducing more benefit sanctions, which some claim is part of a shift towards a more punitive approach to poverty management.²⁹⁶ The Welfare Reform Act 2012 adopted a particularly punitive conditionality regime with the introduction of Universal Credit;²⁹⁷ it has been shown that non-compliance with Universal Credit requirements leads to the second-harshes sanctions worldwide.²⁹⁸ Indeed, the UN Special Rapporteur on Extreme Poverty and Human Rights, in

²⁹¹ *ibid* 570.

²⁹² *ibid*.

²⁹³ *ibid* 571.

²⁹⁴ Andrew Mackley et al, ‘Effect of Welfare Reform and Work Act 2016’ (*House of Commons Library*, March 2018) < <https://commonslibrary.parliament.uk/research-briefings/cdp-2018-0072/> > accessed 12 December 2021.

²⁹⁵ Virginia Mantouvalou, ‘Welfare to Work, Structural Injustice and Human Rights’ (2020) 83 MLR 929, 931.

²⁹⁶ Michael Adler, ‘A New Leviathan: Benefit Sanctions in the Twenty-First Century’ (2016) 43 *Journal of Law and Society* 195, 226.

²⁹⁷ Virginia Mantouvalou, ‘Welfare to Work, Structural Injustice and Human Rights’ (2020) 83 MLR 929, 933.

²⁹⁸ Peter Dwyer and Sharon Wright, ‘Universal Credit, Ubiquitous Conditionality and Its Implications for Social Citizenship’ (2014) 22 *Journal of Poverty and Social Justice* 27, 31.

his visit to the UK in 2018, emphasised the punitive effects of welfare conditionality on the worst-off.

5.59 There has been much empirical research on how the deeply coercive conditionality of the scheme pushes the poor and disadvantaged into precarious work, conditioning in-work poverty rather than helping people escape from it.²⁹⁹ This is not to say that welfare-to-work schemes can never be legitimate or are always unjust, but the particular operation in the UK has created a system of coercing people into exploitative work that has been labelled “state-mediated structural injustice”.³⁰⁰ Although the State does not directly exploit people, it is argued that to the extent a State is responsible for an unjust structure, it has a duty to remedy the injustice, so in this case the government has an obligation to examine and address the current scheme.³⁰¹ Indeed, the European Committee of Social Rights has found that parties may violate the rights of workers under Article 1(2) of the European Convention of Human Rights (ECHR) if welfare-to-work schemes have excessive conditionality and work is exploitative, which academics have argued that the UK system fulfils.³⁰²

5.2.7 Equality of Women Accessing Work and in the Workplace

5.60 In the 2016 Concluding Observations, the Committee recommended that the UK:

- (a) increase the number of women in decision-making roles, in public and private sectors;
- (b) end the gender pay gap, and tackle gender-based segregation in the labour market;
- (c) guarantee equal pay for work of equal value, without discrimination.³⁰³

²⁹⁹ See Virginia Mantouvalou, ‘Welfare to Work, Structural Injustice and Human Rights’ (2020) 83 MLR 929, 936-940 for a review of empirical evidence showing how the system pushes people into exploitative work.

³⁰⁰ *ibid* 942.

³⁰¹ *ibid* 945.

³⁰² *ibid* 949.

³⁰³ Equality and Human Rights Commission, ‘ICESCR Concluding Observations 2016, Paragraph 27’ (EHRC) <<https://humanrightstracker.com/en/un-recommendation/icescr-concluding-observations-paragraph-27/>> accessed 10 December 2021; CESCR, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 27.

5.61 Academics have suggested that one explanation for the gender gap in earnings is related to the limited access of women to workplace power structures, indicating that the three Committee recommendations are interrelated. One study shows that increases in the proportion of women in management positions correlates with decreased non-managerial gender gap in earnings, regardless of changes in equality and diversity policies.³⁰⁴

5.62 Although the government published the Gender Equality at Every Stage Roadmap in 2019³⁰⁵ with accompanying research³⁰⁶ on barriers to women's progression in the workplace, progress has not yet been evaluated despite clear guidelines on monitoring indicators. It is out of the scope of this brief to conduct a comprehensive review of these indicators; an initial look at the gender pay gap indicates some improvement. It should be noted that this provides a very limited picture of the situation; further, in research comparing the UK to Australia, France, Spain, Sweden and South Africa, the UK's gender pay reporting system ranks joint-last, largely as UK employers are not required to take any action to reduce their gaps, with no thresholds or penalties, and a "huge section" of the workforce is not covered as it does not apply to companies with fewer than 250 employees.³⁰⁷ Gender pay gap reporting also does not apply to Northern Ireland.

5.63 In 2017, the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 came into force, requiring employers to publish information about their gender pay gaps (though the requirement was suspended for the 2019-2020 reporting year due to the COVID-19 pandemic).³⁰⁸ In 2016 (prior to mandatory reporting), the gender pay gap was 18.2% (9.4% for full-time workers, -6.1% for part-time workers). The numbers have since improved: in 2021, the gender pay gap was 15.4% (7.9% for full-time workers, -2.7% for part-time workers).

³⁰⁴ Dragana Stojmenovska, 'Management Gender Composition and the Gender Pay Gap: Evidence from British Panel Data' (2019) 26 Gender, Work and Organisation 738.

³⁰⁵ Available at: Government Equalities Office, 'Gender Equality at Every Stage: a Roadmap for Change' (*UK Gov*, 3 July 2019) <<https://www.gov.uk/government/publications/gender-equality-at-every-stage-a-roadmap-for-change>> accessed 10 December 2021.

³⁰⁶ Available at: Government Equalities Office, 'Gender Equality at Work: Research on the Barriers to Women's Progression' (*UK Gov*, 22 October 2019) <<https://www.gov.uk/government/publications/gender-equality-at-work-research-on-the-barriers-to-womens-progression>> accessed 10 December 2021.

³⁰⁷ Minna Cowper-Coles et al, '[Bridging the Gap? An Analysis of Gender Pay Gap Reporting in Six Countries](#)' (*The Fawcett Society*, October 2021) 41.

³⁰⁸ Government Equalities Office, 'Employers do not Have to Report Gender Pay Gaps' (*UK Gov*, 24 March 2020) <<https://www.gov.uk/government/news/employers-do-not-have-to-report-gender-pay-gaps>> accessed 10 December 2021.

Notably, the gender pay gap is higher in every English region than in Wales, Scotland, and Northern Ireland.³⁰⁹ However, attention needs to be paid to larger disparities in the gender pay gap within certain occupations, regions, age groups, and salary bands (including within apprenticeships) in order to highlight remaining gaps.

5.64 Previous academic and civil society research has emphasised that gender-based segregation within the workplace is fuelled by early segregation, including in apprenticeships. Recent research confirms that this is an ongoing issue, with research finding that “the apprenticeships system does little to address the gender pay gap ... largely reflects differences in the sectors that men and women undertake apprenticeships in, and the huge variations in pay levels between them”.³¹⁰ Academics have argued that occupational segregation should be considered at a local level with policies channelled through local authorities, as studies of local labour markets in England and Wales show that occupational segregation and its outcomes are highly contingent on the local context.³¹¹

5.2.8 Minimum Wage and Minimum Wage for Young People

5.65 Prior to 2016, the amount of National Minimum Wage received was dependent on age. In April 2016, the National Living Wage was introduced for those aged 25 and over, with the National Minimum Wage still applying to all those of at least school-leaving age.³¹² In the 2016 Concluding Observations, the Committee recommended that the UK extend the National Living Wage to under 25s and set it at a level which provides workers and their families with a decent standard of living.³¹³ In October 2021, the National Living Wage for workers aged 23 and over was increased to £9.50 an hour following the Low Pay Commission’s recommendations (from

³⁰⁹ ONS, ‘Gender Pay Gap in the UK 2021’ (*UK Statistics Authority*, 26 October 2021) <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2021>> accessed 10 December 2021.

³¹⁰ UnionLearn, ‘[Tackling Apprenticeship Gender Inequality](#)’ (December 2018) 4.

³¹¹ Francisco Perales and Sergi Vidal, ‘Looking Inwards: Towards a Geographically Sensitive Approach to Occupational Sex Segregation’ (2015) 49 *Regional Studies* 582, 596.

³¹² UK Government, ‘National Minimum Wage and National Living Wage Rates’ <<https://www.gov.uk/national-minimum-wage-rates>> accessed 15 January 2022.

³¹³ Equality and Human Rights Commission, ‘ICESCR Concluding Observations 2016, Paragraph 37’ (*EHRC*) <<https://humanrightstracker.com/en/un-recommendation/icescr-concluding-observations-paragraph-37/>> accessed 12 December 2021; CESCR, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 37.

April 2022).³¹⁴ This is still lower than the “real living wage” advocated for by the Living Wage Foundation which stands at £9.90 across the UK and £11.05 in London.³¹⁵ Further, despite the Committee recommendation to extend this to under 25s and statement that this was otherwise discriminatory, there are still differential rates for those under the age of 23, dropping to £4.81 an hour for apprentices and workers aged 16-17 and £6.83 an hour for workers aged 18-20.

5.2.9 Bullying and Harassment in the Workplace

5.66 Although not raised in previous Concluding Observations, the Equality and Human Rights Commission has shown that bullying and sexual harassment in the workplace are widespread.³¹⁶ In July 2021, the government committed to introducing a duty on employers to take reasonable steps to prevent sexual harassment, as well as creating explicit protections from harassment by third parties.³¹⁷ It is also considering ratifying the ILO Convention 190 on ending violence and harassment in the workplace, though there has been little information on this since early 2020.³¹⁸

5.2.10 Health and Safety Conditions in the Workplace

5.67 Although not raised as a concern in Concluding Observations since 1985, there are indications that the pandemic had a negative impact on health and safety conditions in the workplace, particularly for frontline workers, including increased exposure to COVID-19 of health and social care workers (see paragraph 5.43 above).³¹⁹

³¹⁴ Low Pay Commission, ‘Large Minimum Wage Increase to Boost Low-Paid Workers’ Incomes’ (*UK Gov*, 27 October 2021) <<https://www.gov.uk/government/news/large-minimum-wage-increase-to-boost-low-paid-workers-incomes>> accessed 12 December 2021.

³¹⁵ Living Wage Foundation, ‘What is the Real Living Wage?’ <<https://www.livingwage.org.uk/what-real-living-wage>> accessed 12 December 2021.

³¹⁶ EHRC, ‘[Is Britain Fairer? The State of Equality and Human Rights 2018](#)’ (June 2019) 13.

³¹⁷ Government Equalities Office, ‘Government Response to Consultation on Sexual Harassment in the Workplace’ (11 July 2019) <<https://www.gov.uk/government/consultations/consultation-on-sexual-harassment-in-the-workplace>> accessed 12 December 2021.

³¹⁸ UK Parliament, ‘[Violence and Harassment Convention](#): question for DWP’ (5 February 2020) <<https://questions-statements.parliament.uk/written-questions/detail/2020-02-05/12984>> accessed 12 December 2021.

³¹⁹ Women’s Budget Group, ‘[Crises Collide: Women and COVID-19](#)’ (April 2020) 15.

5.2.11 Working Conditions of Migrant Workers

5.68 Recommendations by the Committee in 2016 included requesting that the UK:

- (a) ensure all migrant workers enjoy equal rights for pay, protection from unfair dismissal, rest and leisure, working hour limits, social security, and maternity leave;
- (b) protect migrant workers (including migrant domestic workers) from all forms of exploitation and abuse, including through the Modern Slavery Act 2015;
- (c) ensure migrant workers who feel their rights have been violated can make formal complaints and get legal assistance;
- (d) monitor the working conditions of migrant workers (including migrant domestic workers).³²⁰

5.69 Whilst migrant workers are not directly discriminated against in UK employment law, the UK has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.³²¹ Further, since 2016, there has been no significant positive action to remedy the work-related disadvantages faced by migrant workers, particularly domestic workers, that were highlighted previously by the Commission. In particular, there are criticisms that the visa system contributes to the abuse of migrant domestic workers by their employers due to them not being allowed to change employers as well as being deterred from reporting abuse to the police.³²² The UN Special Rapporteurs on human rights of migrants and trafficking in persons sent a joint communication in May 2021 concluding that workers should be able to change employers at any time and extend visas,³²³ though this has

³²⁰ Equality and Human Rights Commission, 'ICESCR Concluding Observations 2016, Paragraph 35' (EHRC) <<https://humanrightstracker.com/en/un-recommendation/icescr-concluding-observations-paragraph-35/>> accessed 12 December 2021; CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 35.

³²¹ OHCHR, 'UN Treaty Body Database: Ratification Status for United Kingdom of Great Britain and Northern Ireland' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185> accessed 15 January 2022.

³²² Avril Sharp, 'It's Time to Give Migrant Domestic Workers in the UK Their Rights Back' (February 2021) <<https://www.antislavery.org/give-migrant-domestic-workers-in-uk-their-rights-back/>> accessed 12 December 2021; Human Rights Watch, 'UK: Protect Migrant Domestic Workers' (September 2014) <<https://www.hrw.org/news/2014/09/04/uk-protect-migrant-domestic-workers>> accessed 12 December 2021.

³²³ Special Rapporteurs on contemporary forms of slavery and trafficking in persons, 'Letter to UK Government' (May 2021) <<http://www.kalayaan.org.uk/wp-content/uploads/2021/07/SR-letter-to-UK-govt-27-05-2021.pdf>> accessed 12 December 2021.

not been acted upon. Separate concerns are evident as the Nationality and Borders Bill proposes reforms to modern slavery law and practice, which civil society has noted are likely to have unintended negative consequences on victims of trafficking and slavery.³²⁴

5.70 Although migrant workers are protected by the same laws that protect other workers in the UK, including access to the same complaint mechanisms, research indicates that effective enforcement of rights in courts continues to remain an issue, with migrants less likely to take action in comparison to UK-born workers. With relation to EU workers, academics have suggested that under-enforcement of rights may be made worse by Brexit due to anxiety about immigration status,³²⁵ compounding the fact that EU migrants are already much less likely to enforce their rights than non-migrant workers for reasons including precarious employment relationships generating opportunities for exploitation, lack of knowledge or misunderstanding of tribunals and processes, inadequate opportunities for free specialist advice in an appropriate language, and feeling that the system is stacked against them.³²⁶

5.71 Similarly, data indicates that the COVID-19 crisis disproportionately negatively impacted migrant workers, as they are more likely to be working in industries affected by the crisis, as well as more likely to be self-employed and in temporary work. As visa conditions often include barriers to accessing public funds, this puts them in a particularly precarious position.³²⁷

³²⁴ Anti-Slavery CEOs, ‘Letter to MPs on the Nationality and Borders Bill’ (November 2021)

<kalayaan.org.uk/wp-content/uploads/2021/11/Antislavery-Sectors-CEO-Letter-to-MPs-on-the-Nationality-Borders-Bill-FINAL-shared-by-Tamara-23-11-2021.pdf> accessed 12 December 2021; ‘A Statement from Leading Organisations in the Anti-Slavery Sector’ (October 2021) <<https://www.humantraffickingfoundation.org/news/2021/10/27/nationality-and-borders-bill-anti-slavery-sector-statement>> accessed 12 December 2021.

³²⁵ Catherine Barnard and Sarah Fraser Butlin, ‘The Rule of Law and Access to the Courts for EU Migrants’ (2020) 58 JCMS 1621, 1623.

³²⁶ *ibid* 1629.

³²⁷ Marley Morris, ‘Migrant Workers and Coronavirus: Risks and Responses’ (March 2020) <<https://www.ippr.org/blog/migrant-workers-and-coronavirus>> accessed 12 December 2021.

5.2.12 Right to Form and Join Trade Unions and Associated Rights

5.72 In 2016, the Committee recommended that the UK review the Trade Union Act 2016, ensure all workers enjoy full trade union rights without interference, implement the Employment Relations Act 1999 (Blacklists) Regulations 2010 to prevent blacklisting of trade union members, and guarantee that blacklisted workers can take effective legal action and receive compensation.³²⁸

5.73 Whilst the Act has not been reviewed or substantially amended, campaigning has led to certain concessions, though it is still believed to be “damaging and divisive”, with “serious and unnecessary restrictions on unions and their members”.³²⁹ Academics have noted that the additional challenges to taking industrial action that were created by the Act have not yet been addressed, and the need for a new framework is even more imperative given the changing market in the UK and the rise of the gig economy.³³⁰ Strike activity is historically low in Britain, and it is expected that the level of strikes will fall further as a result of the Trade Union Act. An examination of other methods of resolution indicates that these are not replacing strike action, and they do not provide effective remedies in terms of generating leverage over employers. Further, they are not compatible on the collective level, and are almost wholly rear-guard actions. It is claimed that the last three to four decades have resulted in attempts by the government to suppress the level of individual disputes.³³¹

³²⁸ Equality and Human Rights Commission, ‘ICESCR Concluding Observations 2016, Paragraph 37’ (*EHRC*) <<https://humanrightstracker.com/en/un-recommendation/icescr-concluding-observations-paragraph-39/>>

accessed 12 December 2021; CESCR, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 39.

³²⁹ TUC, ‘[Trade Union Act 2016: A TUC Guide for Union Reps](#)’ (April 2017) 3.

³³⁰ Azfer Khan, ‘The Trade Union Act 2016: What Next’ (2017) 2 *Cambridge Law Review* 213, 219.

³³¹ Gregor Gall and Eleanor Kirk, ‘Striking Out in a New Direction? Strikes and the Displacement Thesis’ (2018) 42 *Capital and Class* 195, 196, 201.

5.74 With regards to blacklisting, there have been calls for a public inquiry into the construction blacklisting scandal;³³² however, the government did not launch an inquiry, so an investigation is being commissioned by Unite the Union.³³³

³³² Unite, 'New Blacklisting Evidence of Police Collusion Heightens Need for Public Inquiry' (March 2019) <<https://www.unitetheunion.org/news-events/news/2019/march/new-blacklisting-evidence-of-police-collusion-heightens-need-for-public-inquiry/>> accessed 12 December 2021; Institute of Employment Rights, 'Blacklisted Workers Need More than a Public Inquiry' (March 2018) <<https://www.ier.org.uk/comments/blacklisted-workers-need-more-public-inquiry-they-need-change-law/>> accessed 12 December 2021.

³³³ Unite, 'Blacklisting Investigation' (August 2021) <<https://www.unitetheunion.org/news-events/news/2021/august/blacklisting-investigation/>> accessed 12 December 2021.

6 The Right to Social Security and Protection

6.1 Article 9 of the ICESCR covers the **right of everyone to enjoy social security without discrimination**.³³⁴ This right has been extensively laid out by the CESCR in its [General Comment No 19](#). It is considered to be an **important factor in the reduction of poverty and the fostering of social inclusion**.³³⁵ The Committee considers availability, accessibility and adequacy as key components of this right.³³⁶ The right is further broken down in the coverage of social risks and contingencies, sickness, old age, employment injury, health care, family and child support, disability, survivors, orphans, and maternity.³³⁷

6.2 In its obligations to respect, protect and fulfil rights, the Committee considers that a State Party should **progressively move towards the realisation of these rights without discrimination** (see section [Non-Discrimination](#)). It follows, then, that any retrogression is inherently incompatible with the Covenant - being allowed only on very concrete and justified occasions (see above paragraph 4.1) - and governments are obliged to take necessary steps to ensure social security for all.³³⁸

6.3 Article 10 recognises that the “**widest possible protection and assistance should be accorded to the family**”,³³⁹ with special protection given to mothers before and after childbirth (Article 10 (2)), and emphasis on ensuring all children and young persons are protected from economic and social exploitation without discrimination (Article 10 (3)). Whilst there is **no General Comment specifically discussing the scope of Article 10 obligations, General Comments 16, 18 and 19 reference Article 10** stating the requirement of States to take appropriate measures to eliminate gender-based violence and provide victims with safe housing, remedies and redress for physical, mental and emotional damage,³⁴⁰ the need to protect

³³⁴ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 9.

³³⁵ CESCR, 'General Comment No 19: The Right to Social Security (Art 9)' (4 February 2008) UN Doc E/C.12/GC/19.

³³⁶ *ibid.*

³³⁷ *ibid.*

³³⁸ *ibid.*

³³⁹ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 10 (1).

³⁴⁰ CESCR, 'General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights' (11 August 2005) UN Doc E/C.12/2005/4, para 27.

children from work likely to interfere with their development or physical and mental health,³⁴¹ provide childcare and welfare, provision of special facilities for persons with disabilities and older persons³⁴² and granting paid maternity leave and appropriate medical benefits to all women.³⁴³

6.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016

6.4 The Concluding Observations present **quite extensive coverage of social security in Article 9 in the early reporting cycles, with a substantive number of issues related to the provision of social security, as well as- more concretely- maternity leave and pensions.** The issue comes up quite often again in the last cycles in 2009 and 2016. Although it is also true for other substantive rights, it is of particular relevance to mention that the Committee goes into depth on issues relating to this right, devoting several paragraphs and recommendations whenever it comes up.

6.5 With regard to Article 10, the Committee has raised three main issues on violence and protection. The topic of gender-based violence, particularly domestic violence against women, has been emphasised in all Concluding Observations since 1997, whilst corporal punishment of children in the home was discussed in 2002 and 2009, and the condition of children in care was mentioned in 1997. Aside from violence and protection matters, the Committee has also raised matters that affect equality between men and women, as well as the ability of parents to engage successfully in work, including parental leave benefits and the provision of childcare services.

³⁴¹ CESCR, 'The Right to Work, General Comment No 18: Article 6 of the ICESCR' (6 February 2006) UN Doc E/C.12/GC/18, para 15.

³⁴² CESCR, 'General Comment No 19: The Right to Social Security (Art 9)' (4 February 2008) UN Doc E/C.12/GC/19, para 28.

³⁴³ *ibid*, para 19.

	Negative or insufficient developments
	Topic discussed with no positive or negative judgement
	Positive developments

Rights	Issue	Concluding Observation: Cycle and Year							
		VI 2016	V 2009	IV 2002	III 1997	II 1994	II 1985	I 1981	I 1980
Article 9- right to social security	Social security (EHRT art 9, 10, 11)		-	-	-				
	Ratification of social security instruments	-		-	-				-
	Social care for older persons-pensions (EHRT art 9, 11)			-	-	-	-	-	
Article 10- protection of family, mothers, children	Childcare- provision of services (EHRT art 3, 7, 10)		-	-	-	-			-
	Parental leave and benefits			-	-	-			-
	Punishment of children in the home	-			-	-	-	-	-
	Condition of children in care	-	-	-		-	-	-	-
	Gender-based violence					-		-	-
	Foreign partners joining British partners	-		-	-	-	-	-	-

Table 4: Overview of issues related to social security and protection raised by the Committee in each Concluding Observation, since the first periodic review in 1981.

Provision of Social Security in the United Kingdom

6.6 The first mention of social security is in the 1980 review cycle, when the UK representative praises the country for having a long record of protecting economic, social, and cultural rights. Mr Whyte recalls that the UK security system had been in place since World War I and had been consistently expanding throughout the past decades,³⁴⁴ and the representative from Japan recognises that the UK “had been a world leader in the field of social security”.³⁴⁵ The ILO representative also recognised that some advancement had been taking place in the past years but requested further information.³⁴⁶

³⁴⁴ CESCR, 'Seasonal Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (30 April 1980) UN Doc E/1980/WG.1/SR.19, para 9.

³⁴⁵ *ibid*, para 28.

³⁴⁶ *ibid*, para 27.

6.7 **The same reporting cycle raised concerns about discrimination in the provision of social security to certain workers in non-metropolitan areas and migrants arriving in the UK.**³⁴⁷ The UK responded that there was no restriction on access to social security by migrants, provided they had legal status.³⁴⁸ This is further assured in the 1981 review cycle when stating that social security “applied to foreigners in exactly the same way as it did to indigenous British subjects”.³⁴⁹

6.8 As the CESCR points out in its [General Comment No 3](#), any State Party must justify the appropriateness of any measures taken, in case they might be discriminatory.³⁵⁰ This is why the UK elaborates a bit more when justifying its social security measures in the 1985 Concluding Observations. The UK further clarified that the exclusion of certain groups from the enjoyment of social security was due to, on the one side, to the fact that women were excluded because they were already receiving a maternity allowance and, on the other, workers in trade disputes who could claim benefits without depending on their employers.³⁵¹

6.9 The same 1985 review cycle recognised the step taken when creating a federal Department of Community Services.³⁵²

6.10 Although the tone regarding social security had been generally positive and had included the praising of several measures, from 1994 onwards, **the Committee adopts a much harsher tone and starts to express concern for failings in the social security system.** The 1994 Concluding Observations recommend that the UK revise its social security system as soon as possible.

³⁴⁷ *ibid*, para 13 and 15.

³⁴⁸ *ibid* para 40.

³⁴⁹ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 16th Meeting' (24 September 1981) UN Doc E/1981/WG.1/SR.16, para 3.

³⁵⁰ CESCR, 'General Comment No 3: The Nature of State Parties' Obligations (Art. 2, Para. 1, of the Covenant)' (14 December 1990) UN Doc E/1991/23.

³⁵¹ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 24.

³⁵² *ibid*, para 24.

6.11 When the issue was brought up again in 2016, the Committee expressed deep concern about retrogressive measures taken in matters of social security. The document criticised the cuts in welfare introduced with the **Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016**. By passing this legislation, the UK was reducing the “household benefit cap, [...] the spare-room subsidy (bedroom tax), the four-years freeze on certain benefits and the reduction in child tax benefits”.³⁵³ The Committee is particularly wary about the **discriminatory impact these measures have had on disadvantaged and marginalised groups** and “women, children, persons with disabilities, low-income families and families with two or more children”.³⁵⁴

6.12 The CESCR calls upon the State Party to reverse the measures that had violated the UK’s obligation to progressively realise the right to social security and to guarantee that any welfare benefits are linked to the cost of living and allow all individuals to enjoy an adequate standard of living.³⁵⁵

6.13 The Human Rights Tracker has equally expressed the concern and has assessed that **the UK has made no progress in ensuring social security for all**. According to their analysis, there have not been any policy changes that have significantly impacted the enjoyment of this right.³⁵⁶ This same analysis highlights a severe regression in the provision of social care and a reduction of protection for adult social care.³⁵⁷

Social Care for Older Persons: Pensions in the UK

6.14 The UK representative first mentions the provision of pensions in 1980 by stating that there had been a substantial rise in benefits since 1977.³⁵⁸ In a similar way, in 1981, the UK government lays out the fact that a widow might, at the time of retirement, enjoy a pension

³⁵³ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 40.

³⁵⁴ *ibid*, para 40.

³⁵⁵ *ibid*, para 41.

³⁵⁶ EHRC, ‘Social Security (Welfare Benefits)-UK Government Assessment’ (July 2021) <https://humanrightstracker.com/en/progress-assessment/social-security-welfare-benefits-uk-government-assessment/>

³⁵⁷ EHRC, ‘Social Care- UK Government Assessment’ (August 2020) <https://humanrightstracker.com/en/progress-assessment/social-care-uk-government-assessment/>

³⁵⁸ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (30 April 1980) UN Doc E/1980/WG.1/SR.19, para 8.

based on the contribution of her husband.³⁵⁹ This same issue relating to the widower pension is mentioned again in 1985,³⁶⁰ but not dealt with extensively.

6.15 As was the case with social security generally, from 1994 on, the Committee, when mentioning the state of pensions in the UK, started to express concern on certain issues. In 1994, the CESCR urged the government to make “an enhanced effort” to assess the needs of older persons and implement policies accordingly.³⁶¹

6.16 **The 2009 reporting cycle laid out concerns regarding the provision of insufficient pension funds that were jeopardising the ability of disadvantaged and marginalised groups to enjoy an adequate standard of living.**³⁶² The same document encouraged the UK to ensure that the state pension reform of 2008- which was going to come into effect in 2012- would provide sufficient coverage for disadvantaged and marginalised groups.³⁶³

6.17 A similarly concerned tone is used in 2016 when the Committee points out the **serious shortcoming of pensions and the link between increased mortality among elderly people and the reduction in pension benefits.**³⁶⁴ The recommendation issued in this Concluding Observations document had an equally urgent tone when encouraging the UK to “take all necessary measures to ensure adequate pension benefits, care and treatment of older people”.³⁶⁵

³⁵⁹ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 16th Meeting' (24 September 1981) UN Doc E/1981/WG.1/SR.16, para 5.

³⁶⁰ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 26.

³⁶¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 16.

³⁶² CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 23.

³⁶³ *ibid*, para 23.

³⁶⁴ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 59.

³⁶⁵ *ibid*, para 60.

The provision of adequate welfare benefits for older persons and the obligation to pay particular attention to the needs of older people are laid out in the CESCR [General Comment No 6](#).³⁶⁶

Parental Leave

6.18 Parental leave is discussed by the Committee mostly with regard to **equality between men and women in terms of benefits and the impact of policies on the ability to work**. In 2016, they expressed concern that the modality of shared parental leave does not necessarily result in the increased participation of men in bearing responsibility for childcare,³⁶⁷ whilst in 2009, the fact that parental and paternity leave were not available to the same extent as maternity leave was discussed as negatively impacting equal rights between men and women.³⁶⁸

6.19 This had not been raised as an issue since 1985, when concern was raised that **maternity provisions left loopholes for employers to discriminate** if they did not have suitable alternative vacancies for pregnant women.³⁶⁹ Previously, in 1981, the UK representative stated that as far as they were aware, there were no difficulties faced by self-employed mothers when obtaining maternity benefits.³⁷⁰

Childcare: Provision of Services

6.20 In 2016, for the first time, the Committee noted concern about the **limited availability and high costs of childcare in England and Scotland**, and also stated that the State should increase its efforts in childcare provision, particularly in Scotland and Northern Ireland.³⁷¹ As explained by Engender in their Shadow Report, Scotland has some of the highest childcare

³⁶⁶ CESCR, 'General Comment No 6: The Economic, Social and Cultural Rights of Older Persons' (8 December 1995) UN Doc E/1996/22.

³⁶⁷ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 43.

³⁶⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 19.

³⁶⁹ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, 28.

³⁷⁰ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 21.

³⁷¹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, paras 43-44.

costs in the UK – already amongst the highest in the world – as well as limited childcare offered by local authorities, which restricts the ability of parents in poverty to take up education, training and work.³⁷² Further, the Committee on the Administration of Justice noted that that implementation of Universal Credit envisages childcare infrastructure in place so parents can find work, though this is extremely limited in Northern Ireland.³⁷³

6.21 Previously, there had only been **brief mentions of childcare issues, and all were explanatory**: in 1981, the UK representative explained that local authorities were responsible for providing day nurseries,³⁷⁴ while in 1985 they noted that parents received tax-free benefits for dependent children in school up to the age of 18.³⁷⁵

Gender-Based Violence

6.22 Since 1997, **the Committee has closely followed the issue of gender-based violence**. In that year, they noted “concern” about the “serious incidence of domestic violence against women”,³⁷⁶ whilst in 2002, they strengthened their language to be “deeply concerned” about the increase of domestic violence, making specific recommendations and requesting information on measures to combat the issue.³⁷⁷ In 2009, they reported that despite steps being taken, domestic violence and in particular violence against women, was still a “widespread problem”; they also started to note specific points such as the low number of rape cases brought

³⁷² Engender, 'United Nations International Covenant on Economic, Social and Cultural Rights Shadow Report' (April 2016) 3.

³⁷³ Committee on the Administration of Justice, 'CAJ's Submission to the United Nations Human Rights Committee on Economic Social and Cultural Rights (ICESCR) on the UK's 6th Periodic Report' (April 2016) 7.

³⁷⁴ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 6.

³⁷⁵ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (6 May 1985) UN Doc E/1985/WG.1/SR.17, para 6.

³⁷⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 14.

³⁷⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 35.

to courts.³⁷⁸ Similarly, in 2016, whilst they noted the introduction of the national strategy on gender-based violence in March 2016, they identified the specific lack of information on addressing violence against disabled women and girls as a key “regret”.³⁷⁹ This concern is in line with the importance given to Article 10 rights in the Committee’s General Comment on disabled people, which explains that their Article 10 rights are frequently ignored or denied.³⁸⁰

Punishment of Children in the Home

6.23 In 2002, the Committee raised the issue of punishment of children in the home for the first time, recommending that **physical punishment by families should be prohibited, in line with recommendations of the Committee on the Rights of the Child**.³⁸¹ This was not resolved by 2009, when they reiterated the concern that corporal punishment in the home was not yet prohibited by law.³⁸² The issue was not mentioned in the 2016 Concluding Observations, though as reported by the Children and Young People’s Commissioner Scotland **in 2016, corporal punishment remained legal as a matter of domestic law in the UK** within the family environment.³⁸³

³⁷⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 34.

³⁷⁹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 45

³⁸⁰ CESCR, 'General Comment No 5: Persons with Disabilities' (9 December 1994) UN Doc E/1995/22, para 30.

³⁸¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 14, 36.

³⁸² CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 24.

³⁸³ Children and Young People’s Commissioner Scotland, 'Report on the Application of the ICESCR in Scotland' (2016) 12.

Condition of Children in Care

6.24 In 1997, the Committee noted **concern about the condition of many children in government care**. Based on the report “People Like Us”, they reported a significant reduction in the number of available children’s homes and increased placement in foster homes, with increasing incidence of child abuse in these locations.³⁸⁴

6.25 Although the **topic has not been mentioned in Concluding Observations since, 2016** shadow reports observed that supporting children and young people leaving care to achieve their potential is problematic, and there is a need for services that support children who return to their families from care.³⁸⁵

Foreign Partners

6.26 In 2009, the Committee raised concern over the increase in the age from 18 to 21 for foreign partners to join their British partners, due to the discriminatory effects on some groups, in particular ethnic minorities and women.

6.2 Developments since 2016

6.2.1 Provision of Social Security in the UK

6.27 Social security is arguably one of the most important factors in sustaining adequate standards of living for those parts of society that struggle to make ends meet. **Social security can be the source of income that sustains one’s livelihood in many cases.**

6.28 Despite this being such an important component of peoples’ sustenance, general literature and the non-profit sector point towards the inadequacy of current welfare allowances. **The welfare reform undertaken between 2010 and 2012 that created the Universal Credit scheme is perceived to have had devastating effects on the provision of the right to social**

³⁸⁴ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, 13.

³⁸⁵ Children and Young People’s Commissioner Scotland, ‘Report on the Application of the ICESCR in Scotland’ (2016) 11-12.

security.³⁸⁶ The reason behind the state roll-back in the provision of welfare is the neoliberalist rationale that attempts to incentivise people into work through punitive welfare systems.³⁸⁷ The reform entailed the merging of six different allowances into one single Universal Credit allowance in 2013 under the justification that it would simplify the procedure, but it had the complete opposite effect.³⁸⁸

6.29 Measures such as the benefit cap - where you can only receive a certain amount of money in welfare³⁸⁹ - and the benefit freeze - where benefits were not being increased on a year-on-year basis³⁹⁰ - prove a sharp retrogression in the provision of social security. **The overall provision of welfare is seen as being insufficient to cover basic needs and often stigmatising to those who take it up.**³⁹¹ The restructuring of the social security system and the creation of the Universal Credit Scheme was coupled with a **rapid defunding** and cut in social security spending³⁹², around a £34 billion cut since 2010.³⁹³ The [Institute for Public Policy Research](#) sees a clear link between the recent surges in poverty levels, destitution, precarity and debt as signalling the inadequacy of a system that does not provide a high enough allowance to meet basic needs³⁹⁴. Currently, the Universal Credit allowance can be between £200 and £500

³⁸⁶ Paul Hickman, Peter A. Kemp, Kesia Reeve and Ian Wilson, 'The Impact of the Direct Payment of Housing Benefit: Evidence from Great Britain' (2017) *Housing Studies* 32 8, 1105-1126.

³⁸⁷ *ibid.*

³⁸⁸ Richard Machin, 'Covid-19 and the Temporary Transformation of the UK Social Security System' (2021) *Critical Social Policy* 41(4) 651-662.

³⁸⁹ UK Government, 'Benefit Cap' (2021) <https://www.gov.uk/benefit-cap> accessed 21 January 2022.

³⁹⁰ Adam Corlett, 'The Benefit Freeze Has Ended, But Erosion of the Social Security Safe Net Continues' (2019) Resolution Foundation <https://www.resolutionfoundation.org/publications/the-benefit-freeze-has-ended-but-erosion-of-the-social-security-safety-net-continues/> accessed 21 January 2022.

³⁹¹ Clare McNeil, Dean Hochlaf and Harry Quilter-Pinner, 'Social (In)Security: Reforming the UK's Social Safety Net' (November 2019) Institute for Public Policy Research.

³⁹² *ibid.*

³⁹³ Anjum Klair, 'Our Social Security Net is Failing During the Covid-19 Crisis' (3 August 2020) Trade Union Congress <https://www.tuc.org.uk/blogs/our-social-security-net-failing-during-covid-19-crisis> accessed 22 January 2022.

³⁹⁴ Clare McNeil, Dean Hochlaf and Harry Quilter-Pinner, 'Social (In)Security: Reforming the UK's Social Safety Net' (November 2019) Institute for Public Policy Research..

a month³⁹⁵, which in many cases entails almost a sixth of the average weekly pay most workers would need to cover for their expenses.³⁹⁶

6.30 The **benefit cap was reversed in April 2020**,³⁹⁷ which can be seen as a progressive measure moving slightly towards the realisation of the right to social security. Nevertheless, **this measure is largely seen as insufficient to provide for basic needs because, since it was implemented in 2015, prices have soared.**³⁹⁸ Thus, when benefits are compared relative to earnings, welfare allowances are at a record low.³⁹⁹ It is likely that this measure will be insufficient to reverse retrogressive steps related to austerity measures.

6.31 **Scholarship also points towards the inadequacy of the current punitive social security system and the fact that it often only provides for the bare minimum to survive and not to thrive.**⁴⁰⁰ Conditionality measures include the two-child limit and the need to prove that the claimant is looking for work, measures that have not been proven to be effective in pushing people into work.⁴⁰¹ The ‘[No Recourse to Public Funds](#)’ measure has also entailed that many families with a certain immigration status have not been able to access welfare allowances, reportedly pushing many into poverty.⁴⁰² Delays in payments are also another major issue affecting claimants, since it is required to wait for five weeks until the first payment is made.⁴⁰³

³⁹⁵ UK Government, ‘Universal Credit’ (2021) <https://www.gov.uk/universal-credit/what-youll-get> accessed 21 January 2022.

³⁹⁶ Anjum Klair, ‘Our Social Security Net is Failing During the Covid-19 Crisis’ (3 August 2020) Trade Union Congress <https://www.tuc.org.uk/blogs/our-social-security-net-failing-during-covid-19-crisis> accessed 22 January 2022.

³⁹⁷ Adam Corlett, ‘The Benefit Freeze Has Ended, But Erosion of the Social Security Safe Net Continues’ (2019) Resolution Foundation <https://www.resolutionfoundation.org/publications/the-benefit-freeze-has-ended-but-erosion-of-the-social-security-safety-net-continues/> accessed 21 January 2022.

³⁹⁸ *ibid.*

³⁹⁹ *ibid.*

⁴⁰⁰ Gráinne MacKeever and Tamara Walsh, ‘The Moral Hazard of Conditionality: Restoring the Integrity of Social Security Law’ (2020) Australian Journal of Social Issues 55 78-87.

⁴⁰¹ Anjum Klair, ‘Our Social Security Net is Failing During the Covid-19 Crisis’ (3 August 2020) Trade Union Congress <https://www.tuc.org.uk/blogs/our-social-security-net-failing-during-covid-19-crisis> accessed 22 January 2022.

⁴⁰² *ibid.*

⁴⁰³ *ibid.*

6.32 This makes it very difficult for claimants to secure an adequate standard of living, since individuals require a stable income in order to make choices and improve their situation.⁴⁰⁴ **The inadequacy of the UK's social security system points towards the inability of the government to provide a rights-based welfare scheme⁴⁰⁵ and, thus, places the State Party far from achieving the progressive realisation of the right to social security.**

6.2.2 Social Security and the COVID-19 pandemic

6.33 As is the case with the general standard of living of the UK citizenry (see section [The COVID-19 Pandemic's Impact on Adequate Standard of Living](#)), the COVID-19 pandemic has meant the exacerbation of inequalities and the aggravation of many already vulnerable individuals and families' situations. One way to alleviate many families and individuals' emergencies is through state intervention and the provision of welfare to cover for lost income.

6.34 **The UK government did roll out an unprecedented budget to cover for the needs of those that had lost their income and were generally struggling.**⁴⁰⁶ Considering the scale of the austerity measures implemented during previous decades, the steps taken were seen by many in a very positive light. Three main emergency measures were implemented: the Coronavirus Job Retention Scheme, which covered 80% of workers that were on temporary leave, the Self-Employment Income Support Scheme, and general emergency changes to the social welfare system.⁴⁰⁷ Moreover, conditionality requirements were reduced, making it easier for claimants to access the Universal Credit scheme.⁴⁰⁸

6.35 **Nevertheless, because of the severe shortcomings in the system's functioning, these temporary measures were insufficient.** Ten years of harsh austerity measures and significant cuts in spending for welfare have made social security in the UK **weak and unable to stand a**

⁴⁰⁴ Clare McNeil, Dean Hochlaf and Harry Quilter-Pinner, 'Social (In)Security: Reforming the UK's Social Safety Net' (November 2019) Institute for Public Policy Research.

⁴⁰⁵ Gráinne MacKeever and Tamara Walsh, 'The Moral Hazard of Conditionality: Restoring the Integrity of Social Security Law' (2020) Australian Journal of Social Issues 55 78-87.

⁴⁰⁶ Richard Machin, 'Covid-19 and the Temporary Transformation of the UK Social Security System' (2021) Critical Social Policy 41(4) 651-662.

⁴⁰⁷ *ibid.*

⁴⁰⁸ Anjum Klair, 'Our Social Security Net is Failing During the Covid-19 Crisis' (3 August 2020) Trade Union Congress <https://www.tuc.org.uk/blogs/our-social-security-net-failing-during-covid-19-crisis> accessed 22 January 2022.

crisis like the COVID-10 pandemic.⁴⁰⁹ Although the Universal Credit weekly allowance was raised by £20, this amount was still not enough to cover for expenses and payment roll-outs were reportedly delivered late.⁴¹⁰ There is also a notorious inconsistency in the allowance received by long-term Universal Credit claimants and individuals and families claiming benefits due to COVID-19 circumstances: long-term claimants were still subject to benefit caps, making many households unable to access the temporary raise in benefits.⁴¹¹

6.36 Moreover, the temporary nature of the measures entails a breach of the UK's human rights obligations. The **raise in the Universal Credit weekly allowance** did not only entail a positive measure to alleviate the consequences of the COVID-19 pandemic, but **it also meant that the government was generally taking steps to progressively realise the right to social security and the right to an adequate standard of living.**⁴¹² Nevertheless, the government withdrew the measure in October 2021. **This cut has likely had devastating effects on the enjoyment of the right to social security and the right to an adequate standard of living and can, thus, be read as a retrogressive measure.**⁴¹³

6.2.3 Discrimination in the provision of social security

6.37 The enjoyment of the right to social security without discrimination is one of the most important tenets of this right (see section [Non-Discrimination](#)). Nevertheless, the UK government approach presents several shortcomings in the provision of social security for all.

6.38 This is the case specifically for disabled people. Scholarship and civil society reports point towards the disproportionate amount of loopholes and bureaucratic processes disabled people have to go through in order to receive benefits.⁴¹⁴ This phenomenon, coupled with generalised cuts to social security that have disproportionately impacted disabled people, leaves

⁴⁰⁹ Richard Machin, 'Covid-19 and the Temporary Transformation of the UK Social Security System' (2021) Critical Social Policy 41(4) 651-662.

⁴¹⁰ *ibid.*

⁴¹¹ *ibid.*

⁴¹² JustFair, 'Proposed Cut to Universal Credit a Breach of the UK's Human Rights Obligations' (9 September 2021) <https://justfair.org.uk/proposed-cut-to-universal-credit-a-breach-of-the-uks-human-rights-obligations/> accessed 22 January 2022.

⁴¹³ *ibid.*

⁴¹⁴ Richard Machin, 'Covid-19 and the Temporary Transformation of the UK Social Security System' (2021) Critical Social Policy 41(4) 651-662; Equality and Human Rights Commission, 'Being Disabled in Britain' (2017).

many households in severe destitution.⁴¹⁵ In fact, **59% of families that contained a disabled person were living in material deprivation.**⁴¹⁶ The amount of benefits received is considered insufficient to cover all expenses and ensure a dignified livelihood and cover for all disability-related costs.⁴¹⁷

6.39 In relation to the discrimination of disabled people, the UK underwent a review by the [Committee on the Rights of Persons with Disabilities](#) in 2016 where the government was warned “**that there is reliable evidence that the threshold of grave or systematic violations of the rights of persons with disabilities has been met in the State party**”.⁴¹⁸ The Committee considered that violations had been **caused by welfare system reforms that have disproportionately impacted disabled people.**⁴¹⁹

6.40 Another major example of discrimination is the aforementioned ‘No Recourse to Public Policy Funds’ measure (see paragraph 6.31). The measures entail that many households without a permanent right to remain in the UK, such as people on partner visas, students, or migrants without a permanent leave to remain, are not entitled to receive benefits in case of need.⁴²⁰ For many, **this has meant a significant struggle in meeting housing and general living expenses and the inability to access any alternative that will cover for these, pushing many into poverty.**⁴²¹

6.41 Overall, **due to the many conditionality measures attached to the enjoyment of benefits in the UK** (see paragraph 6.31), **it is safe to conclude that the provision of social security has not been equally distributed across all welfare claimants.** Moreover, general

⁴¹⁵ Equality and Human Rights Commission, ‘Being Disabled in Britain’ (2017).

⁴¹⁶ *ibid.*

⁴¹⁷ *ibid.*

⁴¹⁸ Committee on the Rights of Persons with Disabilities, ‘Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland Carried out by the Committee under Article 6 of the Optional Protocol to the Convention’ (6 October 2016) UN Doc CRPD/C/15/R.2/Rev.1, para 113.

⁴¹⁹ *ibid.*

⁴²⁰ NRPF Network, ‘Immigration Status and Entitlements’ (2021) <https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/immigration-status-and-entitlements/who-has-no-recourse-to-public-funds-nrpf> accessed 22 January 2022.

⁴²¹ Anjum Klair, ‘Our Social Security Net is Failing During the Covid-19 Crisis’ (3 August 2020) Trade Union Congress <https://www.tuc.org.uk/blogs/our-social-security-net-failing-during-covid-19-crisis> accessed 22 January 2022.

austerity measures cuts have disproportionately affected the most disadvantaged groups of society as well as women and families with children.⁴²²

6.42 As a more concrete example, and drawing from previous concerns, the CESCR pointed out (see paragraph 6.14), **pensions have been deemed insufficient to cover the general cost of living expenses.** According to [Centre for Ageing Better](#), **5 million people will reach retirement age at risk of not having enough to cover an adequate standard of living.**⁴²³ The inadequacy of the pensions system also disproportionately affects individuals from Black, Asian and minority groups backgrounds, who often have no other alternative but to use their savings (in case they were able to gather enough funds to retire).⁴²⁴ Women and single households are in a similar position, facing more difficulty in meeting their expenses due to the insufficiency of the amounts given in benefits.⁴²⁵

6.2.4 Parental Leave

6.43 In 2016, the Committee recommended that the UK review the system of shared parental leave with a view to supporting equal sharing of duties.⁴²⁶ There appears to be little progress on this, with the Equality and Human Rights Commission noting in 2020 that the **complexity and insufficiency of the parental leave scheme reinforces gendered assumptions about caring responsibilities** and place a disproportionate responsibility for childcare onto mothers.⁴²⁷ Academics have elaborated on this, arguing that an effective scheme would encourage more men to participate more equally in parenting, transforming **the entrenched traditional division of caring roles in the UK.**⁴²⁸ Since the 1990s, policies aiming to increase equality of paternity leave have been met with low take-up, because they have consistently

⁴²²Diane Elson, 'The Reduction of the UK Budget Deficit: A Human Rights Perspective' (March 2012) *International Review of Applied Economics* 26 2.

⁴²³ Centre for Ageing Better, 'Have We Saved Enough?' (June 2021).

⁴²⁴ *ibid.*

⁴²⁵ *ibid.*

⁴²⁶ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 44.

⁴²⁷ EHRC, '[Evidence to the Business, Energy and Industrial Strategy Committee Inquiry on the Impact of Coronavirus on Businesses and Workers](#)' (May 2020) 27.

⁴²⁸ Jamie Atkinson, 'Shared Parental Leave in the UK: Can it Advance Gender Equality by Changing Fathers into Co-Parents?' (2017) 3 *International Journal of Law in Context* 356, 357.

provided a lower level of benefits compared to maternity leave.⁴²⁹ With regards the current shared parental leave system (introduced in December 2014), commentators have argued that despite being an improvement on previous schemes, certain features of the policy – for example requiring mothers to consent that father take some shared leave, as well as requiring fathers to meet certain eligibility criteria – demonstrate a continued reluctance of the UK government to fully embrace an “involved fatherhood” model as well as commit to gender equitable parental leave.⁴³⁰ This is viewed as falling within the wider debate on fathers as primary carers.⁴³¹

6.2.5 Childcare: Provision of Services

6.44 In 2016, the Committee recommended that the UK ensure childcare services are accessible and affordable, particularly in Scotland and Northern Ireland.⁴³² In Scotland, the COVID-19 pandemic interrupted a planned expansion of childcare provision though this resumed in August 2021; the government has committed to providing 1,140 hours per year (around 30 hours per week) of childcare for all 3–4-year-olds and some 2-year-olds,⁴³³ which is the most generous scheme across the UK and meets campaigner demands for the provision of 30 hours per week of early childcare. However, **in Northern Ireland, the number of hours of childcare available to all 3–4-year-olds is just 475** (855 hours in some pre-schools), and there is no programme for children aged two and under.⁴³⁴

6.2.6 Childcare, Housework and Gender Inequality

6.45 As well as highlighting the importance of childcare provision, the **COVID-19 pandemic has led to observations on continued gender inequality as regards housework and childcare**. Empirical research found that during the first COVID-19 lockdown, although both men and women who lost paid working time increased the time spent on domestic chores,

⁴²⁹ *ibid* 358.

⁴³⁰ *ibid* 361.

⁴³¹ *ibid* 367.

⁴³² CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 44.

⁴³³ Scottish Government, 'Early Education and Care' <<https://www.gov.scot/policies/early-education-and-care/early-learning-and-childcare/>> accessed 15 January 2022.

⁴³⁴ FactCheckNI, 'Childcare Provision in Northern Ireland' (December 2021) <<https://factcheckni.org/articles/childcare-provision-in-northern-ireland/>> accessed 15 January 2022.

women still disproportionately bore a larger share of housework whilst men increased time spent on childcare.⁴³⁵ It has been speculated that remote working may be helpful for mothers' careers, and longer hours spent by fathers with children may help accelerate changes in gender norms.⁴³⁶ However, separate research has shown that female workers working from home ended up taking disproportionate responsibility for both childcare and housework,⁴³⁷ and that differences in working patterns between mothers and fathers have continued to diverge to the detriment of working mothers.⁴³⁸

6.2.7 Gender-Based Violence

6.46 The Committee has consistently provided specific recommendations on action on gender-based violence, including requesting that the government provide information on the impact of the national strategy on gender-based violence in its next report, particularly on disabled women and girls.⁴³⁹ The government has detailed this in its 2021 policy paper on tackling violence against women and girls, including a breakdown of progress against previous actions.⁴⁴⁰ However, the Equality and Human Rights Commission **views general progress on violence against women and girls as “limited”**, as despite recent reforms strengthening the

⁴³⁵ Anna Zamberlan et al, 'Work Less, Help Out More? The Persistence of Gender Inequality in Housework and Childcare During UK COVID-19' (2021) 73 *Research in Social Stratification and Mobility* 1, 8.

⁴³⁶ Richard Blundell, Monica Costa Dias, Robert Joyce and Xiaowei Xu, 'COVID-19 and Inequalities' (2020) 41 *Fiscal Studies* 291, 293.

⁴³⁷ Niall O'Connor, 'The Right to Work and Rights in Work During the Coronavirus Pandemic: The Response of the United Kingdom' in Carla Ferstman and Andrew Fagan (eds), *Covid-19, Law and Human rights* (University of Essex School of Law and Human Rights Centre, 2020) 142; Equality and Human rights Commission, '[Evidence to the Business, Energy and Industrial Strategy committee Inquiry on the Impact of Coronavirus on Businesses and Workers](#)' (May 2020) 25.

⁴³⁸ Kate Power, 'The COVID-19 Pandemic has Increased the Care Burden of Women and Families' (2020) 16 *Sustainability: Science, Practice and Policy* 67.

⁴³⁹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 46; Equality and Human Rights Commission, 'ICESCR Concluding Observations 2016, Paragraph 46' (*EHRC*) <https://humanrightstracker.com/en/un-recommendation/icscr-concluding-observations-paragraph-46/> accessed 18 January 2022.

⁴⁴⁰ Home Office, 'Tackling Violence Against Women and Girls Strategy' (*UK Gov*, 18 November 2021) <https://www.gov.uk/government/publications/tackling-violence-against-women-and-girls-strategy> accessed 18 January 2022.

legal framework, it will take time for their impact to be realised.⁴⁴¹ This is likely exacerbated by the COVID-19 pandemic, which correlates with an increase in the number of police-recorded domestic abuse crimes as well as the number of domestic abuse cases referred to victim support.⁴⁴² Critics have also argued that the Domestic Abuse Act 2021 and the UK's wider approach to domestic violence and abuse demonstrates a shift in framing the issue as "abuse" rather than "violence", suggesting a "watering down" of the response,⁴⁴³ and also **fails to recognise violence and abuse as gendered issues, making it unlikely that the lives of women victims will improve.**⁴⁴⁴

⁴⁴¹ EHRC, 'Violence Against Women and Girls- UK Government Assessment' (*ECHR*) <<https://humanrightstracker.com/en/progress-assessment/violence-against-women-and-girls-uk-government-assessment/>> accessed 18 January 2022.

⁴⁴² UK Parliament, 'Domestic Abuse and COVID-19: A Year into the Pandemic' (*House of Commons Library*, 11 May 2021) <<https://commonslibrary.parliament.uk/domestic-abuse-and-covid-19-a-year-into-the-pandemic/>> accessed 18 January 2022.

⁴⁴³ Jo Aldridge, 'Not an Either/or Situation: The Minimisation of Violence Against Women in UK "Domestic Abuse" Policy' (2021) 27 *Violence Against Women* 1823, 1824.

⁴⁴⁴ *ibid* 1836.

7 The Right to an Adequate Standard of Living

7.1 Article 11 of the [ICESCR](#) recognises “the right of everyone to an adequate standard of living for himself and his family, including **adequate food, clothing and housing** and to the continuous improvement of living conditions”.⁴⁴⁵ Because of the nature of this substantive right, the Committee has broken down its analysis into different pieces. The most important provisions the UN has extensively laid out and will be dealt with in the section are the right to adequate housing and the right to food. Nevertheless, because **article 11 also makes a reference to a general acceptable standard of living**, the section will also briefly introduce whether the Concluding Observations have covered the topic of poverty in the UK for the past six cycles.

7.2 The Committee established the interpretation of the **right to housing in the wider sense of living “somewhere in security, peace and dignity”**,⁴⁴⁶ **rather than just having a roof over one’s head**. Therefore, [General Comment No 4](#) considers this right to be composed by:

- legal security of tenure,
- availability of services,
- affordability,
- habitability,
- accessibility,
- location,
- and cultural adequacy.⁴⁴⁷

7.3 Because the right to **housing is central to the realisation of many other human rights** and, generally, the attainment of human dignity, it is considered extensively in the Committee’s Concluding Observations.


⁴⁴⁵ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, 3.

⁴⁴⁶ CESCR, 'General Comment No 4: The Right to Housing (Art 11 (1) of the Covenant)' (13 December 1991) UN Doc E/1992/23, 7.

⁴⁴⁷ *ibid.*

7.4 On the other hand, the **right to food**, although considered of “crucial importance for the enjoyment of all rights”,⁴⁴⁸ is not considered in the UK reporting cycles until 2016. [General Comment No 12](#) lays out the components of the right to food, considered central to this right the **adequacy of food** and the **sustainability of food availability and access**.⁴⁴⁹

7.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016

 Negative or insufficient developments

			Concluding Observations: Cycle and Year							
Rights			VI 2016	V 2009	IV 2002	III 1997	II 1994	II 1985	I 1981	I 1980
Article 11- right to an adequate standard of living- poverty	Poverty	Poverty (<i>EHRT art 9, 11</i>)					-	-	-	-
		Poverty- Northern Ireland (<i>EHRT art 9, 11</i>)					-	-	-	-
	Right to housing	general availability, affordability, accessibility				-		-		
		discrimination of disadvantaged / marginalised (art 2, 11)								
		Evictions								
		Homelessness								
	Right to food									

Table 5: Overview of issues related to adequate standard of living raised by the Committee in each Concluding Observation, since the first periodic review in 1981.

7.5 Since the start of the first reporting process under the ICESCR in 1980, the Committee has consistently dealt with three broad issues in the fulfilment of article 11 of ICESCR by the UK: **widespread poverty, issues under the right to housing and the neglect of the right to food**.

⁴⁴⁸ CESCR, 'General Comment No 12: The Right to Adequate Food (Art 11)' (12 May 1999) UN Doc E/C.12/1999/25, 1.

⁴⁴⁹ *ibid.*

7.6 Some of these issues (see table above for reference) have been consistently discussed throughout the six UK reporting cycles, indicating the degree of concern the Committee shows in the lack of steps taken by the government to fulfil the core components of these substantive rights. It is common, nevertheless, that certain concerns are raised in relation to more specific circumstances. The right to housing is an especially good example since issues mentioned in the documents can be referred back to the elements of the right as laid out in [General Comment No 4](#).

7.7 The only right that has not been raised consistently throughout the reporting cycles is the right to food. Despite its crucial role in achieving other rights - as is also the case with many of the components of the adequate standard of living - it had not been dealt with before the 2016 Concluding Observation. The Committee deals extensively with the components and importance of the right to food in its [General Comment No 12](#), but **does not advance any concerns about the UK's fulfilment in any previous reporting cycles**. This might be, in part, because some shadow reports submitted to the Committee started to draw attention to the topic only **after the dramatic increase in food bank usage once the UK government reworked the social security system**⁴⁵⁰ (see section [Food Availability and Affordability in the United Kingdom](#) for further discussion).

Poverty in the United Kingdom

7.8 The first time the issue of poverty is mentioned in the UK's Concluding Observations was in 1997. The Committee notes with concern that "there exist unacceptable levels of poverty among certain segments of the population in the State party".⁴⁵¹ The document also points

⁴⁵⁰ Equality and Human Rights Commission, 'Socio-Economic Rights in the UK: Updated Submission to the UN Committee on Economic, Social and Cultural Rights in Advance of the Public Examination of the UK's Implementation of ICESCR (April 2016); Just Fair, Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of ICESCR' (May 2016); Northern Ireland Commissioner for Children and Young People, 'Submission by the Northern Ireland Commissioner for Children and Young People (NICCY) to UN Committee on Economic, Social and Cultural Rights on the Implementation of the International Covenant on Economic, Social and Cultural Rights in Northern Ireland' (n/a); Human Rights Consortium, 'Submission from the Human Rights Consortium to the United Nations Human Rights Committee on Economic, Social and Cultural Rights (CESCR's) Review of the UK's 6th Periodic Report' (April 2016).

⁴⁵¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 9.

towards a **worrisome inequality trend that significantly broadens the gap between the upper and lower classes of society.**

7.9 A similarly worded concern was raised in 2002, making special emphasis on the “persistence”⁴⁵² of unacceptable levels of poverty. Growing inequality is again mentioned, and the Committee raises for the first time the fact that **poverty disproportionately affects children.** The government is then urged to tackle the problem and incorporate the Committee’s comment and the Covenant into enacted legislation.⁴⁵³

7.10 In the subsequent reporting cycle, the Committee reiterated its concern and raised the issue of high levels of inequality among different social groups again. In 2009, **the CESCR also identified children, ethnic minorities, asylum-seekers and migrants, older persons, single mothers, and disabled persons as the most affected by poverty levels in the country.**⁴⁵⁴ These particular groups are singled out because any State Party has an obligation to observe non-discrimination in the fulfilment of any of the economic, social and cultural rights.⁴⁵⁵ According to the CESCR’s [General Comment No 20](#), non-discrimination is “an immediate and cross-cutting obligation in the Covenant”.⁴⁵⁶

7.11 In the sixth reporting cycle in 2016, the Committee employs almost the same language to express concern about poverty levels in the State Party’s territory. This most recent document also points towards the fact that **the UK does not have an agreed-upon definition of poverty** and that **the government has refused to set targets with bound deadlines to be met for measures to reduce poverty to be implemented.**⁴⁵⁷

⁴⁵² CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 18.

⁴⁵³ *ibid.*

⁴⁵⁴ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5.

⁴⁵⁵ CESCR, 'General Comment No 20: Non-discrimination in economic, social and cultural rights (art 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)' (2 July 2009) UN Doc E/C.12/GC/20.

⁴⁵⁶ *ibid.*, para 7.

⁴⁵⁷ Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6.

7.12 This seems to be a particular concern of the Committee since the UK seems to have taken no steps to ameliorate the situation of citizens in poverty and is refusing to set a roadmap to do so in the future, thus failing to progressively realise the right of everyone to an adequate standard of living. The lack of adequate aggregate data (as discussed in paragraph 3.29) makes it almost impossible to grasp the extent of the problem and draft policies and budgets accordingly.

High Poverty Levels in Northern Ireland

7.13 When dealing with poverty levels in the UK, the Committee has given special focus to the high poverty levels in Northern Ireland throughout all the Concluding Observations where poverty is mentioned.

7.14 Most of the instances where worrying levels of poverty in Northern Ireland are mentioned, it is incorporated in expressions of concerns about general poverty levels in the UK. It is usual to see the Committee mention how **the region of Northern Ireland has disproportionately high poverty levels compared to the rest of the country.**

7.15 In 2009, the Committee notes that poverty levels dramatically vary when looking at the different regions across the UK, with some areas experiencing a higher degree of deprivation than other regions.⁴⁵⁸ The CESCR deploys a small section only to deal with this issue by saying that “the Committee is concerned about the **persistent levels of deprivation and inequality throughout Northern Ireland**”.⁴⁵⁹ In relation to this, the UK government is also advised to implement a human rights framework in the region with a special view to providing equality, healthcare, and housing for the most vulnerable sectors of society.⁴⁶⁰

⁴⁵⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 28.

⁴⁵⁹ *ibid*, para 31.

⁴⁶⁰ *ibid*, para 31.

Issues relating to General Availability, Affordability, and Accessibility in Housing

7.16 The CESCR has repeatedly brought to the fore matters associated with the general availability, affordability, and accessibility of housing in the United Kingdom. These components were considered by the Committee as core constituents of the right to housing in its [General Comment No 4](#).⁴⁶¹

7.17 The Committee first identified issues relating to housing conditions in Northern Ireland in its 1981 Concluding Observations. Off the back of the [1979 House Condition Survey](#), the country's representatives point out that Northern Ireland had the worst housing conditions. In the same year, 14.1% of houses in Northern Ireland in the whole of the housing sector (public and private) were unfit⁴⁶², meaning that dwellings were in such poor conditions that their state could negatively impact your health or put you at risk of physical danger.⁴⁶³ The UK representative at the CESCR points out substantial improvement in the years after 1979. The percentage of unfit dwellings in Northern Ireland is reduced from 14.1% in 1979 to 4.9% in 2001, and 2.3% in 2016.⁴⁶⁴

7.18 “Unsafe housing in England and Wales” is again considered a point of concern, and the UK is advised to better monitor the situation of housing in the country.⁴⁶⁵ The concern, although it was not dealt with in 1997, is newly reviewed in 2002- **“The Committee notes with concern that poor quality housing and “fuel poverty” continue to be a problem for a large number of families and individuals”- and the UK is advised the “take immediate measures” to improve the situation of the families living in poor housing conditions.**⁴⁶⁶

⁴⁶¹ CESCR, 'General Comment No 4: The Right to Housing (Art 11 (1) of the Covenant)' (13 December 1991) UN Doc E/1992/23.

⁴⁶² Northern Ireland House Executive, 'NI House Condition Survey: Key Indicators 1979 to 2016' (2016) <https://www.ukhousingreview.org.uk/ukhr18/tables-figures/pdf/18-027.pdf> accessed 20 November 2021.

⁴⁶³ Shelter, 'Is Your Home Fit for Habitation' (18 March 2020) https://england.shelter.org.uk/housing_advice/repairs/is_your_home_fit_for_habitation accessed 15 January 2022.

⁴⁶⁴ *ibid.*

⁴⁶⁵ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19.

⁴⁶⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great

7.19 In 2009, the Committee brought up for the first time the **“chronic shortage of housing” with special concern about the provision of social housing**. The concern over severe problems in availability, affordability and accessibility is again dealt with in 2016, as well as the **lack of social housing that has then the effect of displacing renters to the private sector**, jeopardising their ability to enjoy “affordability, habitability, accessibility and security of tenure”.⁴⁶⁷

Discrimination in the Provision of Housing of Disadvantaged and Marginalised Groups

7.20 The second major issue is discrimination against disadvantaged and marginalised groups, a violation of both Articles 2 and 11 of ICESCR, which is brought up for the first time in 1981 and in all subsequent Concluding Observations until 2016. The tone regarding discrimination is consistently punitive through all the six review cycles and is brought up in relation to different issues across all cycles.

7.21 The 1981 Concluding Observations also recognise “that there were special problems affecting the inner cities where many poorer people and recent immigrants lived”⁴⁶⁸. A [UK Parliamentary resolution of 1968](#) established the Urban Program to tackle the problem of pockets of poverty inside some cities with a budget to tackle local needs.⁴⁶⁹ In the next few years, the programme was assigned a budget of £165 million with a special focus on the needs of ethnic minorities that, at the time, were establishing themselves in the country.

7.22 The topic of discrimination was brought up again in 1994 in relation to **evictions happening in the UK, which the Committee considers to be especially affecting single parents, people with low incomes “or, in general, are among the most vulnerable groups of society”**.⁴⁷⁰

Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79.

⁴⁶⁷ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6.

⁴⁶⁸ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 15.

⁴⁶⁹ Parliament UK, 'Urban Programmes: Government Aid'(1968) <https://api.parliament.uk/historic-hansard/commons/1968/jul/22/urban-programmes-government-aid> accessed 20 November 2021.

⁴⁷⁰ Committee on Economic, Social and Cultural Rights, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and

7.23 From the 2002 Concluding Observations on the CESCR reiterates **discrimination in the enactment of the right to housing to the same groups within the UK's society**. In 2002, it reiterated the Committee's concern about de facto discrimination in housing, especially in relation to **disabled persons and people pertaining to certain ethnic minorities**. The same concern is brought forward in 2009 when mentioning discrimination against disabled people, especially in relation to Scotland, as well as discrimination against Catholic families in Belfast. The 2016 cycle examined similar worries the Committee held in relation to **discrimination against Roma, Gypsies and Travellers and Catholic families in Belfast**.

Evictions in the United Kingdom

7.24 Although the topic of evictions has not been brought up with the same consistency as the two previous issues, it is of paramount importance to examine its appearance in the Concluding Observations because the Committee, in both its [General Comment No 4](#) and [No 7](#), **considers evictions to be “prima facie incompatible with the requirements of the Covenant”**.⁴⁷¹ Moreover, it is not only a violation of the right to housing under the ICESCR, but it entails a breach of civil and political rights, that the Committee identifies as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

7.25 The first time evictions are dealt with in Concluding Observations was in 1981. The UK representative, Mr. Longford, justifies the fact that, when evictions do occur in the country, the reason is generally that the person refused to pay, rather than the reason being the inability to assume the cost of rent. Mr. Longford also points out that, in those cases where a person or family has been unable to afford the cost of their accommodation, the government was swift in providing an emergency alternative accommodation.⁴⁷²

Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19.

⁴⁷¹ CESCR, 'General Comment No 4: The Right to Housing (Art 11 (1) of the Covenant)' (13 December 1991) UN Doc E/1992/23, para 18.

⁴⁷² CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 16th Meeting' (24 September 1981) UN Doc E/1981/WG.1/SR.16.

7.26 The tone of subsequent reporting cycles changes drastically with regard to evictions and the Committee reproaching the UK's actions. The 1994 Concluding Observations point out that many households were experiencing "harassment or illegal eviction" and criticise the fact that national legislation is not fit to tackle this problem.⁴⁷³ As mentioned previously, **this violation of the Covenant's provisions disproportionately affected the most disadvantaged groups of society as well as single parents renting in the private sector.**

7.27 In 1997, the same concern was raised once again by denouncing the fact that **Travellers and ethnic minorities were not receiving sufficient protection against evictions.**⁴⁷⁴ The Committee also urges the government to monitor the situation correctly by **providing statistics in the next periodic review,**⁴⁷⁵ recommendation that had already been made in the previous Concluding Observations.

7.28 In 2009, the same concern is brought to attention by the Committee in relation to the fact that Roma, Gypsies, and Travellers are disproportionately impacted by evictions.⁴⁷⁶ In line with what the CESCR had been advising in previous Concluding Observations, the UK is instructed to revise eviction practices to be in line with the provisions laid out in [General Comment No 7](#).

⁴⁷³ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 11.

⁴⁷⁴ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 17.

⁴⁷⁵ *ibid*, para 30.

⁴⁷⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5.

Homelessness

7.29 The pervasiveness of the problem of homelessness in the UK means the issue appears consistently, the first time being the 1994 Concluding Observations. The Committee first welcomes the government initiative in disseminating the Homelessness Code of Guidance for Local Authorities.⁴⁷⁷ Nevertheless, **subsequent sections call attention to the fact that authorities have not been properly addressing the issue of homelessness in line with the Covenant's obligations.** Almost the exact wording is used in the 1997 Concluding Observations when pointing out the **inadequacy and insufficiency of measures taken to tackle homelessness**, and the UK is advised to properly monitor the situation in the coming five years.⁴⁷⁸

7.30 The concern is raised again in 2002, saying that “the Committee is concerned at the persistence of homeless” and expresses particular concern about the fact that it disproportionately affects ethnic minorities.⁴⁷⁹ This Concluding Observation also draws attention to the **health conditions of many homeless persons that suffer from alcoholism and mental illness**, and the government is subsequently advised to give proper access to health care. The Committee “remains concerned”⁴⁸⁰ in its 2009 Concluding Observations and advises the central UK government to take as an example the Homeless etc. (Scotland) Act of 2003 as a benchmark for the enforceability of the right to housing.

⁴⁷⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19.

⁴⁷⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19.

⁴⁷⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 19.

⁴⁸⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 29.

7.31 In 2016, the Committee reiterates its worry about “the significant rise in homelessness” which affects particularly England and Northern Ireland.⁴⁸¹ **The document also identifies certain groups in society that tend to find themselves in the situation of homelessness, these being single persons, families with children, victims of domestic violence, disabled persons, and asylum seekers.** The drafters of the document also express special concern about the **reduction in financial support to local authorities that has contributed to the increase in homelessness**, and about the worrying trend of criminalisation of rough sleepers by local authorities. Regarding the two aforementioned concerns, the Committee advises the government to **allocate sufficient funds and pass appropriate legislation** to prevent the criminalisation of homelessness.

The Right to Food in the United Kingdom

7.32 The progressive realisation of the right to food by the UK is slightly more difficult to judge by looking at the Concluding Observations. No concern regarding the provision of food is raised by the Committee until 2016, leaving a blank period of almost thirty years. **The UK has not undergone any Special Rapporteur visits on the right to food**, as it has with many other economic, social, and cultural rights.

7.33 Nevertheless, in 2016, the CESCR pinpoints a number of issues relating to the right to food. The first mention points towards the **lack of measures adopted to prevent the increase in “food insecurity, malnutrition, including obesity”**.⁴⁸² The Committee also **criticises the lack of action to prevent reliance on food banks** and increase the rates of breastfeeding.

7.34 Subsequently, the UK is urged to implement a national strategy to address the problem of food insecurity and advises the government to follow [General Comment No 12](#). The fact that the government is pointed towards such a substantive point of action - the implementation of a national strategy - signals inaction in the years before 2016 since this was not a reality in the UK before this periodic review. This can be an indicator of the complete lack of action towards the progressive realisation of the right to food.

⁴⁸¹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 51.

⁴⁸² *ibid*, para 53.

7.2 Developments since 2016

7.35 Article 11 of the ICESCR, as pointed out before (see paragraph 7.2), encompasses a wide range of substantive rights that, as is the case with many other socio-economic rights, intersect with other provisions in the Convention. As will be discussed below (see paragraph 7.40), relevant scholarship has identified one important trend that **links the changes to the social security system with the increase in poverty, housing deprivation and food insecurity in the past years UK**.⁴⁸³ There is also a frequent link between an individual experiencing one dimension of deprivation and potentially also suffering other kinds of deprivation as a result.⁴⁸⁴

7.36 It is thus paramount to deal extensively with the funding the UK has devoted to poverty alleviation, housing, and food. Many scholars establish a strong link between a decline in the citizenry's ability to enjoy an adequate standard of living and substantive changes in the state's role in the provision of social welfare as conditional and increasingly privatised⁴⁸⁵. **Neoliberalist policies have been identified by many as one of the most harmful factors affecting levels of deprivation in the UK**, which entails the progressive withdrawal of the state and the increasing emphasis on personal responsibility.⁴⁸⁶ Scholars also draw a connection between increased levels of insecure work and low-paid jobs.⁴⁸⁷

7.37 Although many pinpoint the 1990s as the time when these changes began to happen with the enactment of liberal policies, **most scholars point towards 2010 as a crucial year**. In 2010, **the most relevant welfare reform was approved, and it is said to have had a significant impact on increased levels of poverty, housing deprivation and food insecurity**.

⁴⁸³ Paul Hickman, Peter A. Kemp, Kesia Reeve and Ian Wilson, 'The Impact of the Direct Payment of Housing Benefit: Evidence from Great Britain' (2017) *Housing Studies* 32 8, 1105-1126.

⁴⁸⁴ Deniz Sevinc, 'How Poor is Poor? A Novel Look at Multidimensional Poverty in the UK' (2020) Springer Nature.

⁴⁸⁵ Hannah Lambie-Mumford, 'The Growth of Food Banks in Britain and What They Mean for Social Policy' (2019) *Critical Social Policy* 39 1, 33-22.

⁴⁸⁶ Paul Hickman, Peter A. Kemp, Kesia Reeve and Ian Wilson, 'The Impact of the Direct Payment of Housing Benefit: Evidence from Great Britain' (2017) *Housing Studies* 32 8, 1105-1126.

⁴⁸⁷ Hannah Lambie-Mumford, 'The Growth of Food Banks in Britain and What They Mean for Social Policy' (2019) *Critical Social Policy* 39 1, 33-22.

7.38 Despite cuts in funding being very relevant for the analysis of adequate standards of living in the UK, the country has also undergone significant political and societal changes that have to do mainly with **Brexit** and the **COVID-19 pandemic**. Therefore, these two processes will also be carefully examined, especially in relation to housing, where their effects were blatantly and immediately felt. Moreover, it will also be pertinent to scrutinise **discrimination** in the enjoyment of Article 11 of the ICESCR, with special attention to disadvantaged and marginalised groups generally, and **Roma, Gypsies and Travellers more concretely**.

7.2.1 Poverty Trends in the UK since 2016

7.39 Poverty is likely to be one of the most difficult issues to analyse since it involves a range of different factors that might impact the poverty experience of a given individual. Some studies measure poverty considering income, but also living standards, housing conditions and access to healthcare.⁴⁸⁸ In fact, **75% of individuals that are materially deprived are also falling under the category of multi-dimensional poverty,⁴⁸⁹ meaning they experience not only income deprivation but also other kinds of insecurity**. Thus, poverty could potentially not only fall under the adequate standards umbrella but also spill over to the fulfilment, or the violation, of the right to work and health, which points toward the strong interlinkage between socio-economic rights.

7.40 Nonetheless, it is pertinent to highlight the trend in general levels of poverty in the UK in the past years. **Several reports point towards an initial drastic increase in poverty levels in the 1980s, followed by a gradual and mild amelioration from the end of the 1990s and the beginning of the 2000s.**⁴⁹⁰ Relevant for the examination of the most recent period is the fact that, although this amelioration trend allowed for a significant increase in income levels in poorer households, **this was completely halted from 2010-2011 and poverty levels have remained stagnant since then.**⁴⁹¹ The [Institute for Fiscal Studies](#) consistently reiterates the

⁴⁸⁸ Deniz Sevinc, 'How Poor is Poor? A Novel Look at Multidimensional Poverty in the UK' (2020) Springer Nature.

⁴⁸⁹ *ibid.*

⁴⁹⁰ Brigid Francis-Devine, 'Poverty in the UK: Statistics' (2021) House of Commons Library.

⁴⁹¹ Jonathan Cribb, Agnes Norries Keiller and Tom Waters, 'Living Standards, Poverty and Inequality in the UK: 2018' (2018) Institute for Fiscal Studies.

lack of progress in income growth,⁴⁹² meaning that those that were in poverty have remained in poverty. While the reduction in worklessness after the 2008 financial crisis pointed towards a possible increase in incomes, the reduction of social benefits from 2010 onwards pushed towards the other direction,⁴⁹³ leaving poverty levels unchanged. In fact, **from 2016 to 2020, poverty levels have remained virtually unchanged in a constant 22% of people living on absolute low income,**⁴⁹⁴ which represents 14.5 million people in the UK.⁴⁹⁵

7.41 Several reports have expressed special concern about the recent increase in poverty levels among children and pensioners. While these two groups had previously experienced an improvement in poverty rates, pensioners have experienced a steady increase since 2013 and child poverty increased from 27% in 2011 to 30% in 2019.⁴⁹⁶

7.42 Income inequality is another indicator of major concern. While in the past five years before 2002, **those within the highest percentile of the income distribution have seen their income increase by 6%, low-income sectors of the population have seen no change in their living standards.**⁴⁹⁷ This is because although incomes had risen from 2014 to 2017, income falls from 2016 to the present have wiped out any previous improvements.⁴⁹⁸

7.43 In the face of this dramatic situation, **the government has barely enacted any relevant legislative changes or allocated any budget for the improvement of the situation of people living in poverty.** The [UN Special Rapporteur on Extreme Poverty and Human Rights](#) restated what many scholars have pointed out: **the major policy changes enacted in 2010 had**

⁴⁹² Pascale Bourquin, Robert Joyce and Agnes Norries Keiller, 'Living Standards, Poverty and Inequality in the UK: 2020' (2020) Institute for Fiscal Studies; Jonathan Cribb, Tom Waters, Thomas Wernham and Xiaowei Xu, 'Living Standards, Poverty and Inequality in the UK: 2021' (2021) Institute for Fiscal Studies.

⁴⁹³ Jonathan Cribb, Tom Waters, Thomas Wernham and Xiaowei Xu, 'Living Standards, Poverty and Inequality in the UK: 2021' (2021) Institute for Fiscal Studies.

⁴⁹⁴ 'Poverty Rate by Person Type Over Time, After Housing Costs (AHC)' (2020) Joseph Rowntree Foundation <https://www.jrf.org.uk/data/poverty-rate-person-type-over-time-after-housing-costs-ahc> accessed 16 November 2021.

⁴⁹⁵ Brigid Francis-Devine, 'Poverty in the UK: Statistics' (2021) House of Commons Library.

⁴⁹⁶ 'Poverty Rate by Person Type Over Time, After Housing Costs (AHC)' (2020) Joseph Rowntree Foundation <https://www.jrf.org.uk/data/poverty-rate-person-type-over-time-after-housing-costs-ahc> accessed 16 November 2021.

⁴⁹⁷ Pascale Bourquin, Robert Joyce and Agnes Norries Keiller, 'Living Standards, Poverty and Inequality in the UK: 2020' (2020) Institute for Fiscal Studies.

⁴⁹⁸ *ibid.*

disastrous consequences and have wiped out the two decades of progress, causing a new increase in poverty rates.⁴⁹⁹ According to the report and in violation of the State's obligation to progressively realise the right to an adequate standard of living, "the Government has remained determinedly in a state of denial. While local authorities throughout England and Wales are outsourcing or abandoning services, and devolved authorities in Scotland and Northern Ireland are frantically trying to 'mitigate' or counteract the worst features of the Government's policies, ministers insist that all is well and running according to plan."⁵⁰⁰ Despite some minor policy changes that involved the slight increase in Universal Credit allowances in 2018,⁵⁰¹ the government has remained inactive in tackling poverty in the UK.

7.44 It is, thus, appropriate to interpret the current situation as a substantial violation of the country's obligation of progressive realisation since no measures or steps have been enacted to ensure the improvement of individual's enjoyment of the rights enriched under Article 11 of ICESCR. In fact, **one might even go as far as to say that the UK has taken retrogressive measures when enacting the 2010 social security reforms that have worsened the situation of many people living in poverty.**

7.2.2 Is the Right to Housing Sufficiently Protected in the UK?

7.45 In order to analyse whether there have been any major improvements, this section will look at some of the relevant components the CESCR [General Comment No 4](#) identifies. Apart from a general consideration of the right to housing, it is pertinent to examine legal security of tenure, affordability, habitability, and accessibility.⁵⁰²

⁴⁹⁹ Human Rights Council, 'Visit to the United Kingdom of Great Britain and Northern Ireland: Report of the Special Rapporteur on Extreme Poverty and Human Rights' (23 April 2019) UN Doc A/HRC/41/39/Add.1.

⁵⁰⁰ *ibid*, para 9.

⁵⁰¹ *ibid*.

⁵⁰² CESCR, 'General Comment No 4: The Right to Housing (Art 11 (1) of the Covenant)' (13 December 1991) UN Doc E/1992/23.

7.2.3 The Financialisation of Housing and Funding Cuts

7.46 Most literature points towards a general housing crisis in the UK, in line with similar trends developing in Europe and around the world. Housing is an especially delicate subject to touch upon, since the real estate sector accounts for 12% of the UK's GDP.⁵⁰³ **Precisely because housing is part of a massive financial market, it is often not considered a right but rather a commodity.**

7.47 There is extensive scholarly literature discussing the so-called “**financialisation of housing**”. The [UN Special Rapporteur on the Right Adequate Housing](#) defines the term as the “structural changes in housing and financial markets and global investment whereby housing is treated as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets”.⁵⁰⁴ According to the report, this trend undermines the social function of housing as a provider of security and dignity and, thus, severely jeopardises the realisation of housing as a substantive right.⁵⁰⁵

7.48 **The current commodification of housing in the UK dates back to the 1970s during the period of Margaret Thatcher's government, when privatisation and overreliance on markets was at the core of government policy.**⁵⁰⁶ During that period, the government promoted the “right to buy” instead of the right to housing, a phenomenon that resulted in large proportions of public housing being sold and competition being introduced in the housing market.⁵⁰⁷ The 1970s and 1980s also saw the government aiding individuals and families in buying houses, further contributing to the creation of the current era of housing financialisation.⁵⁰⁸ The current situation is characterised by large companies that secure assets at a large scale and the appearance of internationally powerful landlords.⁵⁰⁹ **D. Birchall argues that marketisation severely affects the worsening of housing affordability,** subsequently

⁵⁰³ Ben Ansell and David Adler, ‘Brexit and the Politics of Housing in Britain’ (2019) *The Political Quarterly*.

⁵⁰⁴ Human Rights Council, ‘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’ (18 January 2017) UN Doc A/HRC/34/51.

⁵⁰⁵ *ibid.*

⁵⁰⁶ Brian Lund, *Housing in the United Kingdom: Whose Crisis?* (1st edn, Manchester Metropolitan University 2019).

⁵⁰⁷ *ibid.*

⁵⁰⁸ David Birchall, ‘Challenging the Commodification of Human Rights: The Case of the Right to Housing’ (2021) *Santa Clara Journal of International Law* 19 1.

⁵⁰⁹ *ibid.*

causing **increased numbers of evictions and homelessness** but this is rarely established as a link, since there is never a clear cut violation that points towards a certain actor, but is rather a structural trend.⁵¹⁰

7.49 Because of the scale and complexity of this financial market, the government has favoured deregulation and, as with many other governments around the world, **government policy making is “devoid of reference to housing as a human right”**.⁵¹¹ There is a tendency to try to fulfil the government’s obligation in relation to the right to housing through financial policies that would rely on market efficiency to realise an individual’s right to housing.⁵¹²

7.50 This major privatisation trend culminated in the aforementioned social welfare reform in 2010 (see paragraph 6.28). This is especially relevant for the analysis of affordability and habitability conditions in the UK and has been identified by relevant scholarship as a crucial turning point to examine. In terms of housing, **the 2010 welfare reform entailed that the Housing Benefit would be eradicated and incorporated into the newly built Universal Credit scheme**.⁵¹³ This reform created two problematic and often discussed legislative features: on the one side, **the so-called “bedroom tax” that reduced the allowance when tenants were considered to be under-occupying the property** (had a spare bedroom), which further reduced the individual or family’s ability to afford rent; and on the other side, **the Benefit Cap that prevented people from exceeding a certain amount of benefits received a year**.⁵¹⁴

7.51 This phenomenon also points towards a severe **shortage of social housing** that started to be very pronounced during the 1990s. Since 1991, there has been an average annual loss of 24,000 social homes and, while in 1990 the government built 28,000 social houses, in 2020 they only built 7,000.⁵¹⁵ The dimensions of this housing crisis affect not only the availability of

⁵¹⁰ *ibid.*

⁵¹¹ Human Rights Council, ‘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’ (18 January 2017) UN Doc A/HRC/34/51, para 7.

⁵¹² David Birchall, ‘Challenging the Commodification of Human Rights: The Case of the Right to Housing’ (2021) Santa Clara Journal of International Law 19 1.

⁵¹³ Paul Hickman, Peter A. Kemp, Kesia Reeve and Ian Wilson, ‘The Impact of the Direct Payment of Housing Benefit: Evidence from Great Britain’ (2017) Housing Studies 32 8, 1105-1126.

⁵¹⁴ *ibid.*

⁵¹⁵ ‘Social Housing Deficit’ (2020) Shelter https://england.shelter.org.uk/support_us/campaigns/social_housing_deficit accessed 16 November 2021.

social housing, but also **the general availability of housing for everyone.**⁵¹⁶ In fact, the building of houses was halved in 50 years, from 3 million during the 1960s to 1.3 million during the 2010s decade.⁵¹⁷ All these trends and phenomena have a great impact on the increase in house prices and thus **jeopardises housing affordability and, in turn, affects the ability of individuals to enjoy decent housing conditions and avoid the risk of eviction and homelessness.** As previous Concluding Observations from the CESCR have pointed out (see paragraph 7.19), this shortage of housing pushes those that cannot afford to buy a house into the rental market, which also has a negative impact on people's ability to enjoy an affordable, adequate and secure home.

7.2.4 General Housing Affordability Trends and Housing Conditions

7.52 Most research relating to housing affordability in the UK overwhelmingly agrees in saying that the country is suffering a severe affordability crisis. **House prices have steadily increased since the 1970s**, with the most pronounced growth during the 1990s and a sustained upward trend since then.⁵¹⁸ **Most scholarship points towards this increase in housing prices being much higher than growth in household incomes.**⁵¹⁹

7.53 A major concern when dealing with house prices is the fact that, while prices have steadily increased, the number of newly built houses has decreased dramatically both in the public and private sectors.⁵²⁰ Research points towards the fact that government housing policy has been the main culprit of the UK's housing affordability crisis.⁵²¹ **Together with the fact that the housing market is an oligarchy, controlled by a relatively small number of actors, the government action in the face of affordability problems has been restricted to**

⁵¹⁶ Brian Lund, *Housing in the United Kingdom: Whose Crisis?* (1st edn, Manchester Metropolitan University 2019).

⁵¹⁷ 'Social Housing Deficit' (2020) Shelter https://england.shelter.org.uk/support_us/campaigns/social_housing_deficit accessed 16 November 2021.

⁵¹⁸ Joanna Poon and Dean Garratt, 'Evaluating UK Housing Policies to Tackle Housing Affordability' (2012) *International Journal of Housing Markets and Analysis* 5 3, 253-271.

⁵¹⁹ Joanna Poon and Dean Garratt, 'Evaluating UK Housing Policies to Tackle Housing Affordability' (2012) *International Journal of Housing Markets and Analysis* 5 3, 253-271; Christian Hilber, 'UK Housing and Planning Policies: the Evidence from Economic Research' (2015) LSE Center for Economic Performance.

⁵²⁰ Joanna Poon and Dean Garratt, 'Evaluating UK Housing Policies to Tackle Housing Affordability' (2012) *International Journal of Housing Markets and Analysis* 5 3, 253-271.

⁵²¹ Christian Hilber, 'UK Housing and Planning Policies: the Evidence from Economic Research' (2015) LSE Center for Economic Performance.

implementing financial incentives⁵²², jeopardising the ability of those that want to rent to enjoy an affordable and secure house. Policies have included aid to first-time home buyers and trying to increase the supply of housing, a strategy that has been systematically shrinking since 2010 when the Labour Party drastically reduced state intervention.⁵²³ Currently, 17% of the UK's housing stock is social renting and the government is spending only 1.38% of their budget on housing.⁵²⁴

7.54 This downward trend in affordability in the UK has severely impacted the ability of individuals to pay rent or mortgage in the past years. London has been ranked the second least affordable city in the world in 2021, only after Hong Kong.⁵²⁵ In the same year, [Demographia](#) ranked the UK as 'Seriously Unaffordable' with a 4.8 ratio, above Singapore and the United States.⁵²⁶

7.55 Moreover, as previously pointed out, "house prices are 7.8 higher than median earnings"⁵²⁷ in the whole of the UK, while **housing is eleven times higher than the average London wage**.⁵²⁸ According to the [OECD](#), 48% of low-income tenants pay more than 40% of their income on rent.⁵²⁹

7.56 In many instances, higher prices mean that individuals and families are forced into smaller places. According to the [National Housing Federation](#), 3.7 million people are living in

⁵²² Joanna Poon and Dean Garratt, 'Evaluating UK Housing Policies to Tackle Housing Affordability' (2012) *International Journal of Housing Markets and Analysis* 5 3, 253-271.

⁵²³ Joanna Poon and Dean Garratt, 'Evaluating UK Housing Policies to Tackle Housing Affordability' (2012) *International Journal of Housing Markets and Analysis* 5 3, 253-271.

⁵²⁴ OECD Affordable Housing Database, 'Public Policies towards Affordable Housing' (2020) <https://www.oecd.org/housing/data/affordable-housing-database/housing-policies.htm> accessed 17 December 2021.

⁵²⁵ Global Property Guide, 'World's Most Expensive Cities' (2021) <https://www.globalpropertyguide.com/most-expensive-cities> accessed 17 December 2021.

⁵²⁶ 'Demographia International Housing Affordability' (2021) Urban Reform Institute.

⁵²⁷ Wendy Wilson and Cassie Barton, 'What is Affordable Housing?' (2021) Commons Library Briefing.

⁵²⁸ Schroders, Duncan Lamont, 'What 175 Years of Data Tell us about House Price Affordability in the UK' (2021) <https://www.schroders.com/en/uk/private-investor/insights/markets/what-174-years-of-data-tell-us-about-house-price-affordability-in-the-uk/> accessed 17 December 2021.

⁵²⁹ OECD Affordable Housing Database, 'Housing Conditions' (2019) <https://www.oecd.org/housing/data/affordable-housing-database/housing-conditions.htm> accessed 17 December 2021.

overcrowded spaces.⁵³⁰ **In 2019, the OECD concluded that 7% of low-income households are living in overcrowded spaces.**⁵³¹ Overcrowding is not the only problem that affects households. Following the [Decent Homes Standard](#) that establishes a certain degree of quality for homes (a decent state of repair, reasonably modern facilities and a degree of thermal comfort), **around 25% of privately rented homes and almost 20% of owner-occupied homes do not meet those standards.**⁵³² For instance, 44% of households do not have proper heating, and 46% are affected by mould.⁵³³

7.57 All these concerns bring to the forefront the fact that issues around availability, affordability and habitability have not been properly addressed in the UK. Thus, although the CESC has been consistently highlighting the need for action to solve the chronic shortage of housing and affordability and habitability issues, **the situation does not seem to have experienced any improvements since the last reporting cycle;** rather, it has either remained equally worrisome or worsened per the data provided above.

7.58 When dealing with the general availability, habitability, and affordability of housing in the UK, one should not only be concerned about the current situation alone, but also about what it entails in terms of future sustainable housing. **With the threat of climate change looming above all countries, including the UK, the housing stock in the country is reportedly unfit to stand climate change-related events.**⁵³⁴ According to the [Committee on Climate Change](#), only in England 4.5 million homes overheat and 1.8 million households live in areas where floods are common.⁵³⁵ As these events are expected to rise in the coming years due to the effects

⁵³⁰ National Housing Federation, 'Poor Housing Causing Health Problems for Nearly a Third of Brits during Lockdown' (2020) <https://www.housing.org.uk/news-and-blogs/news/poor-housing-causing-health-problems-for-nearly-a-third-of-brits-during-lockdown/> accessed 17 December 2021.

⁵³¹ OECD Affordable Housing Database, 'Housing Conditions' (2019) <https://www.oecd.org/housing/data/affordable-housing-database/housing-conditions.htm> accessed 17 December 2021.

⁵³² Justine Piddington, Simon Nicol, Helen Garrett and Matthew Custard, 'The Housing Stock of The United Kingdom' (2020) BRE Trust.

⁵³³ Robert Booth and Patrick Butler, 'Poor Housing Harms Health of 20% of Renters in England, says Shelter' (2021) The Guardian <https://www.theguardian.com/society/2021/oct/13/poor-housing-harms-health-of-20-of-renters-in-england-says-shelter> accessed 17 December 2021.

⁵³⁴ Committee on Climate Change, 'UK Housing: Fit For the Future?' (February 2019) <https://www.theccc.org.uk/wp-content/uploads/2019/02/UK-housing-Fit-for-the-future-CCC-2019.pdf> 15 January 2022.

⁵³⁵ *ibid*, page 11.

of climate change, disadvantaged groups will be disproportionately affected, especially by overheating and floods as they are the most common issues affecting the UK.⁵³⁶

7.59 Although the consequences of climate change are only just beginning to be experienced, it is already known that **the UK housing stock is contributing to its exacerbation and that urgent action needs to be taken to make energy-efficient housing.**⁵³⁷ The fact that current housing conditions negatively contributes to climate change is also likely to have consequences upon the general sustainability of housing in the long term⁵³⁸ and will probably also impact the enjoyment of related rights.

7.2.5 Legal Security of Tenure and Evictions in the UK

7.60 Legal security of tenure is another crucial component of the right to housing as established by the ICESCR. [General Comment No 4](#) establishes legal security as one of its main characteristics and entails an obligation for the State Party to protect against evictions, harassment, and threats.⁵³⁹

7.61 Legal security in the UK is part of a “safety net” that creates a legally enforceable duty for local authorities to provide alternative accommodation to those in urgent need.⁵⁴⁰ Nonetheless, the issue of evictions has been rather worrisome in the last years. **Many point towards a significant increase in evictions in the 12 years between 2003 and 2017: 7,200 more people lost their homes between those years.**⁵⁴¹ Numbers remain at the same alarming

⁵³⁶ Sarah Lindley et al., ‘Climate Change, Justice and Vulnerability’ (24 November 2011) Joseph Rowntree Foundation <https://www.jrf.org.uk/report/climate-change-justice-and-vulnerability> accessed 15 January 2022.

⁵³⁷ Committee on Climate Change, ‘UK Housing: Fit For the Future?’ (February 2019) <https://www.theccc.org.uk/wp-content/uploads/2019/02/UK-housing-Fit-for-the-future-CCC-2019.pdf> 15 January 2022.

⁵³⁸ *ibid.*

⁵³⁹ CESCR, ‘General Comment No 4: The Right to Housing (Art 11 (1) of the Covenant)’ (13 December 1991) UN Doc E/1992/23.

⁵⁴⁰ Mark Stephens and Chris Leishman, ‘Housing and poverty: a longitudinal analysis’ (2017) *Housing Studies* 32, 1039-1061.

⁵⁴¹ Joseph Rowntree Foundation, ‘Poverty, Evictions and Forced Moves’ (2017).

levels in 2021 (despite the temporary ban on evictions during the pandemic, see paragraph 7.80), with almost a hundred people evicted a day.⁵⁴²

7.62 **The reason for these eviction numbers is mainly attributed to the frequent use of [Section 21 of the Housing Act 1988](#), with very high numbers of these evictions concentrated in London.⁵⁴³ Section 21 allows landlords to evict in a period of two months without giving any reasonable cause and leaves tenants without any defence against the eviction.⁵⁴⁴ The second most relevant reason for the sustained high eviction numbers are the changes in welfare benefits mentioned in previous sections (see section [Provision of social security in the UK](#)). These reductions in benefits render many unable to afford rent at market prices.⁵⁴⁵**

7.63 Eviction rules have substantially changed during the COVID-19 pandemic and have had a particular impact on individuals and families running rent arrears, all of which will be discussed in a later section (see section [The COVID-19 Pandemic's Impact on Adequate Standard of Living](#)).

7.2.6 Homelessness

7.64 One of the most extreme consequences an individual might face as a result of housing insecurity and/or deprivation is the experience of homelessness. Research establishes the causes of homelessness are two main issues: **increased unemployment and “heightened housing market pressures”**.⁵⁴⁶ Findings in G. Bramley and S. Fitzpatrick’s study point towards the fact that housing pressures have a greater impact on the likelihood of experiencing homelessness in the UK than labour market changes.⁵⁴⁷

⁵⁴² Shelter, ‘91 Families Made Homeless Every Day in England’ (2021) https://england.shelter.org.uk/media/press_release/91_families_made_homeless_every_day_in_england accessed 17 December 2021.

⁵⁴³ Joseph Rowntree Foundation, ‘Poverty, Evictions and Forced Moves’ (2017); Ben Ansell and David Adler, ‘Brexit and the Politics of Housing in Britain’ (2019) *The Political Quarterly*.

⁵⁴⁴ *ibid.*

⁵⁴⁵ *ibid.*

⁵⁴⁶ Glen Bramley and Suzanne Fitzpatrick, ‘Homelessness in the UK: Who is most at Risk?’ (2018) *Housing Studies* 33 1, 96-116.

⁵⁴⁷ *ibid.*

7.65 Changes in homelessness numbers in the UK vary greatly according to region. In the past five years, homelessness in England has risen 16%, while the ten year period between 2010 and 2020 saw a 132% increase.⁵⁴⁸ Wales and Scotland have experienced a different trend, leaning towards a significant decrease in the number of rough sleepers.⁵⁴⁹ Overall, the UK now has around 120,000 rough sleepers across the country.⁵⁵⁰ Apart from considering housing pressures as an important reason leading to homelessness, **leading UK NGOs point towards a chronic shortage in social housing and severe welfare allowances reductions as leading causes pushing people to the streets.**⁵⁵¹

7.2.7 Food Availability and Affordability in the United Kingdom

7.66 As is the case for previously dealt with substantive rights, an individual's ability to enjoy the right to food is also negatively impacted by welfare policy changes enacted from 2010 and by the larger neoliberal framework that favours a decrease in state intervention.⁵⁵² **Since 2010, the UK has witnessed a dramatic increase in malnutrition, hunger and food bank usage, leading the country to have 8.4 million living in food-insecure homes.**⁵⁵³ The pervasiveness of insecure work, low-paid work, welfare reform and rising living standards are among the most relevant causes driving the increase in this situation.⁵⁵⁴ **Most give special focus to the welfare reform as the main cause for food insecurity.** As pointed out by the [Trussell Trust](#), the “referral system highlights that the most frequently given reasons for which people are referred

⁵⁴⁸ CRISIS, ‘Homelessness Monitor’ (2021) <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/> accessed 17 December 2021.

⁵⁴⁹ *ibid.*

⁵⁵⁰ Aamna Mohdin and Tobi Thomas, ‘Youth Homelessness Has Risen 40% in Five Years, says UK Charity’ (2021) *The Guardian* <https://www.theguardian.com/society/2021/oct/18/youth-homelessness-up-40-per-cent-in-five-years-says-uk-charity-centrepoint> accessed 17 December 2021.

⁵⁵¹ CRISIS, ‘Homelessness Monitor’ (2021) <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/> accessed 17 December 2021; ‘What Causes Homelessness?’ (2021) Shelter https://england.shelter.org.uk/support_us/campaigns/what_causes_homelessness accessed 17 November 2021.

⁵⁵² Hannah Lambie-Mumford, ‘The Growth of Food Banks in Britain and What They Men for Social Policy’ (2019) *Critical Social Policy* 39 1, 33-22; Christina Beatty, ‘Managing Precarity: Food Bank Use by Low-Income Women Workers in a Changing Welfare Regime’ (2020) Wiley.

⁵⁵³ Nicole Lieberman, ‘The Justiciable Right to Food and Adequate Nutrition in the UK: A Feasible Position?’ (2020) *Birkbeck Law Review* 75 7.

⁵⁵⁴ Hannah Lambie-Mumford, ‘The Growth of Food Banks in Britain and What They Men for Social Policy’ (2019) *Critical Social Policy* 39 1, 33-22.

to food banks are benefit delays and benefit changes”.⁵⁵⁵ Nevertheless, the picture is more complex than merely the welfare reform- although with a severe impact- complicated personal situations might also play a role in food bank usage as well as “the rising cost of living combined with stagnating wages”.⁵⁵⁶

7.67 Food insecurity and food bank usage have often been regarded as a benchmark for measuring rising levels of poverty.⁵⁵⁷ **It is thus pertinent to point out that dramatic rises in food bank usage support the view that general poverty levels are rising in the UK, causing the inability of many to afford food.**

7.68 Research points towards a sharp increase in food prices, forcing individuals and families to eat fewer quantities of food.⁵⁵⁸ The increase in prices affects both availability – as mentioned before – and adequacy, since healthier foods tend to be more expensive.⁵⁵⁹ Leading NGOs in the field point towards an upwards trend in food bank usage, especially since 2016. Only from 2018 to 2020, there was an 18% increase with 1.9 million emergency parcels distributed by [Trussell Trust](#) food banks.⁵⁶⁰ **Right before the COVID-19 pandemic, 2.5% of all UK households had to use food banks.**⁵⁶¹ These statistics represent a 28% in independent food bank usage in the period only between 2018 and 2020.⁵⁶² The case of food banks in the UK are especially interesting in terms of literature since there had not been a lot of discussion before 2016- and the right to food had just been discussed very briefly in the CESCR’s Concluding Observations- but, because of the sharp rise in their usage, they have now been drawing attention much more frequently. **Because of this sharp increase, it is pertinent to assess the seriousness of the situation as a retrogressive step, taking the UK further away from the progressive realisation of the right to food for all.**

⁵⁵⁵ Rachel Loopstra and Doireann Lalor, ‘Financial Insecurity, Food Insecurity, and Disability: The Profile of People Receiving Emergency Food Assistance from The Trussell Trust Foodbank’ (2017) The Trussell Trust, 2.

⁵⁵⁶ *ibid*, 3.

⁵⁵⁷ Christina Beatty, ‘Managing Precarity: Food Bank Use by Low-Income Women Workers in a Changing Welfare Regime’ (2020) Wiley.

⁵⁵⁸ Nicole Lieberman, ‘The Justiciable Right to Food and Adequate Nutrition in the UK: A Feasible Position?’ (2020) *Birkbeck Law Review* 75 7.

⁵⁵⁹ *ibid*.

⁵⁶⁰ Glen Bramley, Morag Treanor, Filip Sosenko and Mandy Littlewood, ‘State of Hunger: Building the Evidence of Poverty, Destitution, and Food Insecurity in the UK’ (2021) The Trussell Trust.

⁵⁶¹ *ibid*.

⁵⁶² *ibid*.

7.69 Scholarly research highlights the **lack of government action** when it comes to protecting the right to food. Because of the government's new approach to social welfare, relevant authorities are **effectively giving up the responsibility to provide food to increasingly professionalised charities**.⁵⁶³ Many see this externalisation of the government's responsibility to protect the right to food as unsustainable⁵⁶⁴ and inherently discriminatory, since they are based on the exclusion of those that cannot afford to pay for food to a system outside the normal supermarket an average citizen uses.⁵⁶⁵ As an alternative, **the government should adopt a rights-based approach and move away from the UK's historical reluctance to adopt the right to food in the country's legal system**, a scenario that would put an enforceable obligation upon the government and protect individuals against the breach of the right.⁵⁶⁶

7.2.8 Food Sustainability and the Impacts of Climate Change

7.70 Off the back of the COVID-19 pandemic and recent climate action at the [COP26 summit](#), the effects of climate change on food availability and adequacy in generations to come are increasingly being discussed. In addition to the natural inflation in food prices, the market is suffering; food prices and food adequacy are under severe threat by the possible effects climate change will have.

7.71 Although the UK is not one of the countries hardest hit by climate change, its effects will begin to be felt locally and as a consequence of changes in other countries. **Literature suggests that as extreme weather events and changes in ecosystems unfold, agricultural production, farming and fishing will be under threat and will affect both the nutritional quality of food and access to it.**⁵⁶⁷ Moreover, because many foods' production will be

⁵⁶³ Hannah Lambie-Mumford, 'The Growth of Food Banks in Britain and What They Mean for Social Policy' (2019) *Critical Social Policy* 39 1, 33-22; Nicole Lieberman, 'The Justiciable Right to Food and Adequate Nutrition in the UK: A Feasible Position?' (2020) *Birkbeck Law Review* 75 7; Christina Beatty, 'Managing Precarity: Food Bank Use by Low-Income Women Workers in a Changing Welfare Regime' (2020) Wiley.

⁵⁶⁴ Christina Beatty, 'Managing Precarity: Food Bank Use by Low-Income Women Workers in a Changing Welfare Regime' (2020) Wiley.

⁵⁶⁵ Hannah Lambie-Mumford, 'The Growth of Food Banks in Britain and What They Mean for Social Policy' (2019) *Critical Social Policy* 39 1, 33-22.

⁵⁶⁶ *ibid.*

⁵⁶⁷ Gina Ziervogel and Polly J. Ericksen, 'Adapting to Climate Change to Sustain Food Security' (2010). John Wiley & Sons 1.

jeopardised and general production will fall, **food prices are expected to rise as a result.**⁵⁶⁸ Because food is a global commodity, this will both be the case in the UK as well as a result of changes in production across the world.

7.72 This phenomenon will not have the same impact on all segments of society since the effects of climate change will “affect the poor more than the rich”.⁵⁶⁹ Thus, **it is likely that those in the lower-income strata will face further difficulties affording food and accessing nutritionally adequate nourishment.**⁵⁷⁰ As governments engage in negotiations to stop and mitigate the effects of climate change, further emphasis has to be placed on the impact this will have on the most disadvantaged people in society and, generally, on the enjoyment of the right to food, among other socio-economic rights. Although [COP26 has seen historic agreements](#) to stop carbon emission and promote investments to mitigate climate change,⁵⁷¹ the impact of anthropogenic climate change must be weighted from a human rights perspective in order to avoid certain groups being disproportionately affected.

7.2.9 Brexit and the Right to Food in the UK

7.73 The UK’s exit from the European Union is likely to have an impact on the enjoyment of rights in the country. This is especially noticeable in the case of the right to food since the UK is heavily reliant on EU member states to feed its citizenry.⁵⁷² **Food shortages and sharp rises in food prices were already foreseen before the deal became effective on the 31st of December 2020.**⁵⁷³ And these issues have indeed become a reality after the final enactment of the deal.

⁵⁶⁸ Iain R Lake, Lee Hooper, Asmaa Abdelhamid, Graham Bentham, et. al, ‘Climate Change and Food Security: Health Impacts in Developed Countries’ (2012) Environmental Health Perspectives 120 11.

⁵⁶⁹ Wolfgang Sachs, ‘Climate Change and Human Rights’ (2008) Society for International Development 51, 332-237.

⁵⁷⁰ Iain R Lake, Lee Hooper, Asmaa Abdelhamid, Graham Bentham, et. al, ‘Climate Change and Food Security: Health Impacts in Developed Countries’ (2012) Environmental Health Perspectives 120 11.

⁵⁷¹ United Nations, ‘COP26: A Snapshot of the Agreement’ (2021) <https://unric.org/en/cop26-a-snapshot-of-the-agreement/> accessed 19 December 2021.

⁵⁷² Tim Land, Erick Millstone et al, ‘Feeding Britain: Food Security after Brexit’ (July 2018) Centre for Food Policy.

⁵⁷³ Tim Land, Erick Millstone et al, ‘Feeding Britain: Food Security after Brexit’ (July 2018) Centre for Food Policy; Martine Jayne Barons and Willy Aspinall, ‘Anticipated impacts of Brexit scenarios on UK food prices and

7.74 There are a number of different factors that affect these phenomena, and the full impact of Brexit on the enjoyment of the right to food is still to be fully felt. **Rough estimates say that general prices are expected to rise 10% over 18 from September 2021,**⁵⁷⁴ food being one item retailers are especially worried about. Due to several changes in rules regulating the trading of goods, the UK is faced with higher tariffs from the World Trade Organisation (WTO) (commonly referred to as 'red tape'), estimating that the government will have to face £7bn a year in post-Brexit bureaucracy.⁵⁷⁵ New controls when passing the border and new immigration laws have entailed that the country is suffering from a severe labour shortage that, in relation to the supply of food, has affected especially lorry drivers.⁵⁷⁶ This, together with soaring energy prices,⁵⁷⁷ **has made it increasingly difficult for food to reach supermarkets, provoking a nationwide shortage, and has caused food prices to increase significantly.**

7.75 The UK government needs a nation-wide strategy to ensure adequate access to affordable food for everyone now more than ever. As the impacts of Brexit keep being felt, the UK will need to enact policies in order to prevent disadvantaged groups and those that were already under pressure from disproportionately suffering from food shortages and price increases.

implications for policies on poverty and health: a structures expert judgement approach' (22 January 2020) BMJ Open.

⁵⁷⁴ Sarah Butlet and Graeme Wearden, 'Shop prices rise amid driver shortages and Brexit red tape' (1 September 2021) The Guardian <https://www.theguardian.com/business/2021/sep/01/shop-prices-rise-driver-shortages-brexit-red-tape> accessed 15 January 2022.

⁵⁷⁵ George Parker, Peter Foster and Daniel Thomas, 'British Business faces £7bn Red Tape Bill Under Brexit Border Plan' (14 July 2020) Financial Times <https://www.ft.com/content/fbc6f191-6d69-4dcb-b374-0fa6e48a9a1e> accessed 15 January 2022.

⁵⁷⁶ Jon Henley, 'Food Shortages Hitting Britons More than Many in the EU, Poll Finds' (22 December 2021) The Guardian <https://www.theguardian.com/business/2021/dec/22/food-shortages-hitting-britons-more-than-many-in-eu-poll-finds> accessed 15 January 2022.

⁵⁷⁷ *ibid.*

7.2.10 The COVID-19 Pandemic's Impact on Adequate Standard of Living

7.76 The effects of the **COVID-19** pandemic have been felt in a number of different areas and have, in some instances, meant that **the situation of many already vulnerable people has been brought to the extreme in terms of their standards of living**. Although inequalities were already staggering before the pandemic hit, it “arrived in the middle of this worrying scene and amplified existing inequalities”.⁵⁷⁸

7.77 Firstly, poverty has reportedly been one of the most worrisome issues during the pandemic. Although some reports point towards a slight decrease in the relative poverty line due to a temporary increase in received benefits,⁵⁷⁹ poverty levels have become alarming. The UK government put in place a temporary rise in Universal Credit by £20 a week, which for many meant a slight increase in capital.⁵⁸⁰ Nevertheless, **the complex COVID-19 situation has pulled many into poverty due to loss of employment, inflation, and increased housing costs**.⁵⁸¹ In fact, despite the temporary and slight decrease in poverty levels, **poverty is expected to increase dramatically, with an extra 500,000 people at severe risk after the benefits increase was reversed in October 2021**.⁵⁸² There is also evidence of the stark increase in Universal Credit claimants that, by August 2020, had gone up 90% from the start of that same year.⁵⁸³

7.78 Food bank usage can be another indicator of rising poverty levels. In fact, food banks in the Trussell Trust network reported an 84% increase in usage at the peak of the pandemic between February and April 2020, while there was a stark 126% increase in usage in the large UK food bank network in the same period.⁵⁸⁴

⁵⁷⁸ Margaret Whitehead, David Taylor-Robinson and Ben Barr, ‘Poverty, Health, and Covid-19: Yet Again, Poor Families Will Be Hardest Hit by the Pandemic’s Long Economic Fallout’ (2021) Department of Public Health, Policy and Systems, University of Liverpool, 1.

⁵⁷⁹ Brigid Francis-Devine, ‘Poverty in the UK: Statistics’ (2021) House of Commons Library; Evidence and Impact Team, ‘UK Poverty 2020/2021’ Joseph Rowntree Foundation.

⁵⁸⁰ Evidence and Impact Team, ‘UK Poverty 2020/2021’ Joseph Rowntree Foundation.

⁵⁸¹ *ibid.*

⁵⁸² Brigid Francis-Devine, ‘Poverty in the UK: Statistics’ (2021) House of Commons Library.

⁵⁸³ Evidence and Impact Team, ‘UK Poverty 2020/2021’ Joseph Rowntree Foundation.

⁵⁸⁴ Glen Bramley, Morag Treanor, Filip Sosenko and Mandy Littlewood, ‘State of Hunger: Building the Evidence of Poverty, Destitution, and Food Insecurity in the UK’ (2021) The Trussell Trust.

7.79 Falling into poverty has especially affected those that were already in vulnerable situations, especially low-paid workers, minority groups, and lone parents.⁵⁸⁵ In the wake of the pandemic, **there has also been an alarming increase in child poverty**, an issue that was already a staggering threat in the UK. It is expected that an additional 200,000 children will experience poverty after their families stop receiving the additional benefits,⁵⁸⁶ further exacerbating an already existing problem. **Because many families saw their rent and housing expenses increase and their free school meals disappear, families with children are especially vulnerable to experiencing poverty during the pandemic.**⁵⁸⁷

7.80 In terms of housing, as individuals and families across the country were forced into their homes, housing inequalities were ever more apparent. While many had the privilege of spending lockdown in spacious houses, others were cramped in small spaces as overcrowding increasingly became a problem.⁵⁸⁸ Before the pandemic, 36% of all UK households had some kind of housing problem, rendering them vulnerable to experiencing hardship during the pandemic.⁵⁸⁹ Evidence shows that renters have been among the hardest hit by the pandemic, experiencing severe difficulties in meeting housing costs.⁵⁹⁰ Despite the fact that some measures were implemented by the government to alleviate the situation (increased Local Housing Allowance and ban on evictions), these measures were insufficient to tackle the situation.⁵⁹¹ In fact, by October 2020, **there were an estimated 700,000 private and social renters in arrears.**⁵⁹²

⁵⁸⁵ Evidence and Impact Team, 'UK Poverty 2020/2021' Joseph Rowntree Foundation.

⁵⁸⁶ Brigid Francis-Devine, 'Poverty in the UK: Statistics' (2021) House of Commons Library.

⁵⁸⁷ Margaret Whitehead, David Taylor-Robinson and Ben Barr, 'Poverty, Health, and Covid-19: Yet Again, Poor Families Will Be Hardest Hit by the Pandemic's Long Economic Fallout' (2021) Department of Public Health, Policy and Systems, University of Liverpool.

⁵⁸⁸ Adam Tinson and Amy Clair, 'Better Housing is Crucial for our Health and the COVID-19 Recovery' (2020) Health Foundation.

⁵⁸⁹ *ibid.*

⁵⁹⁰ Evidence and Impact Team, 'UK Poverty 2020/2021' Joseph Rowntree Foundation.

⁵⁹¹ *ibid.*

⁵⁹² Adam Tinson and Amy Clair, 'Better Housing is Crucial for our Health and the COVID-19 Recovery' (2020) Health Foundation.

7.81 This situation is only expected to worsen with the economic downturn the pandemic has caused. As unemployment was expected to rise, many households are expected to see their income shrink, which, without sufficient social welfare to cover their expenses, will mean that many will not be able to meet their housing expenses.⁵⁹³ Additionally, housing prices will soar as investors see the housing market as the perfect place to put their money, funds that will see an increase due to government incentives.⁵⁹⁴

7.82 As Grace Blakeley points out, “as unemployment increases, many people will find themselves unable to pay rent and poverty and homelessness could increase as a result”.⁵⁹⁵ **The evictions ban and the furlough scheme aided many in avoiding the harshest consequences of the economic crisis caused by the pandemic.**⁵⁹⁶ In fact, it is estimated that by March 2021, around 37,000 people were given temporary accommodation to avoid rough sleeping.⁵⁹⁷ **Nevertheless, the temporary nature of these measures points towards the possibility of eviction numbers and people sleeping on the streets ramping up once the situation goes back to *normal* and many reportedly fear not being able to pay for their housing costs.**

7.2.11 Non-Discrimination and Equality

7.83 Non-discrimination is one of the most important tenants that crosscuts ICESCR and compels every State Party to prevent discrimination and enact policies to promote equality.⁵⁹⁸ When the adequate standard of living is not sufficiently protected, it is usual that the most disadvantaged sectors of society are disproportionately suffering the consequences of precarity. Under [General Comment No 20](#), the government is obliged to enact positive measures to correct this de facto discrimination (see paragraph 4.1).

⁵⁹³ Grace Blakeley, ‘Financialisation, Real Estate, and COVID-19 in the UK’ (2020) Oxford University Press and Community Development Journal.

⁵⁹⁴ *ibid.*

⁵⁹⁵ *ibid.*, 81.

⁵⁹⁶ Christine Whitehead, Ann Edge and Martina Rotolo, ‘Homelessness and Rough Sleeping in the Time of COVID-19’ (2021) London School of Economics.

⁵⁹⁷ *ibid.*

⁵⁹⁸ CESCR, ‘General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights (Art 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)’ (2 July 2009) UN Doc E/C.12/GC/20.

7.84 The first relevant group to deal with in terms of discrimination is lower-income groups within the UK's societal structure. **Lower-income groups are much more likely to experience difficulties in paying their mortgage or rent⁵⁹⁹ as well as being able to afford food.**⁶⁰⁰ Glen Bramley and Suzanne Fitzpatrick also point towards the fact that homelessness "is not randomly distributed across the population, but rather the odds of experiencing it are systematically structured around a set of identifiable individual, social and structural factors"⁶⁰¹ and conclude that **poverty is central to the generation of homelessness.**⁶⁰²

7.85 Government policies, instead of working towards the correction of this de facto discrimination that puts in a more difficult situation lower-income groups, tend to have no effect or negatively impact it. Many scholars point towards the insufficiency of current social security allowances to cover for housing costs and generally living costs, further displacing some sectors of society.⁶⁰³ Others point towards the inexistence of measures to prevent people from relying on food banks as a main source of food intake.⁶⁰⁴ **Housing affordability also unequally affects women; since they tend to earn less than men, housing costs are a much bigger burden for women.**⁶⁰⁵ On the other side, single households, young people and people from black and minority ethnic groups are at a much higher risk of suffering from homelessness.⁶⁰⁶

⁵⁹⁹ Deniz Sevinc, 'How Poor is Poor? A Novel Look at Multidimensional Poverty in the UK' (2020) Springer Nature.

⁶⁰⁰ Nicole Lieberman, 'The Justiciable Right to Food and Adequate Nutrition in the UK: A Feasible Position?' (2020) Birkbeck Law Review 75 7.

⁶⁰¹ Glen Bramley and Suzanne Fitzpatrick, 'Homelessness in the UK: Who is most at Risk?' (2018) Housing Studies 33 1, 96-116.

⁶⁰² *ibid.*

⁶⁰³ Mark Stephens and Chris Leishman, 'Housing and poverty: a longitudinal analysis' (2017) Housing Studies 32 8, 1039-1061; Paul Hickman, Peter A. Kemp, Kesia Reeve and Ian Wilson, 'The Impact of the Direct Payment of Housing Benefit: Evidence from Great Britain' (2017) Housing Studies 32 8, 1105-1126.

⁶⁰⁴ Hannah Lambie-Mumford, 'The Growth of Food Banks in Britain and What They Mean for Social Policy' (2019) Critical Social Policy 39 1, 33-22; Nicole Lieberman, 'The Justiciable Right to Food and Adequate Nutrition in the UK: A Feasible Position?' (2020) Birkbeck Law Review 75 7.

⁶⁰⁵ Duncan Lamont, 'What 175 Years of Data Tell Us About House Price Affordability in the UK' (13 March 2021) Schroders <https://www.schroders.com/en/uk/private-investor/insights/markets/what-174-years-of-data-tell-us-about-house-price-affordability-in-the-uk/> accessed 15 January 2022.

⁶⁰⁶ Glen Bramley and Suzanne Fitzpatrick, 'Homelessness in the UK: Who is most at Risk?' (2018) Housing Studies 33 1, 96-116.

7.86 This, apart from signalling the inability of the government to progressively realise the right to an adequate standard of living, is also breaching its obligation to correct de facto discrimination.

7.87 **Romany Gypsies and Travellers** have also historically suffered from discrimination in the UK. This is inherently related to the right to housing, since they were never offered culturally adequate housing. There has been an abundance of laws enacted to regulate caravan sites and transitory places, but Gypsies and Traveller's right to adequate housing was recognised with difficulty.⁶⁰⁷ **Although their right not to be discriminated against was recognised in the [2010 Equality Act](#),**⁶⁰⁸ **the European Commission highlighted the shortcomings in the administration's tackling of the issue.**⁶⁰⁹ Reportedly, Gypsies and Travellers in the UK still suffer from evictions that often push them towards places that can negatively impact their health and are often denied culturally adequate housing, this being permanent or transitory sites to park caravans where desired.⁶¹⁰

⁶⁰⁷ Robert Home, 'Gypsies and Travelers in the United Kingdom: Planning, Housing and Human Rights in a Changing Legal Regulatory Framework' (2009) Stellenbosch Law Review 20.

⁶⁰⁸ UK Government '2010 Equality Act' (2010).

⁶⁰⁹ Commissioner for Human Rights, 'The United Kingdom should ensure adequate housing for Gypsies and Travellers' (2012) Council of Europe <https://www.coe.int/en/web/commissioner/-/the-united-kingdom-should-ensure-adequate-housing-for-gypsies-and-travellers> accessed 15 January 2022.

⁶¹⁰ *ibid.*

7.88 Lastly, disabled people also face severe problems in accessing adequate housing. According to the [Equality and Human Rights Commission](#), **disabled people face a severe shortage of accessible homes, which jeopardises their ability to live independently.**⁶¹¹ Although it is relatively easier to have an accessible home when applying for public housing, waiting lists are so long that it often becomes out of reach for many.⁶¹² On top of this, it is rare to find private landlords that will accommodate accessibility needs, which further complicates the situation since many are pushed from the public to the private sector.⁶¹³ **Despite some local authorities having identified a 68% of private developers that do not meet accessibility requirements, few administrations have taken any steps, and, when there are solutions available, they are extremely long and bureaucracy-intensive processes.**⁶¹⁴

⁶¹¹ Equality and Human Rights Commission, 'Housing and Disabled People' (11 May 2018) <https://www.equalityhumanrights.com/en/publication-download/housing-and-disabled-people-britains-hidden-crisis> accessed 15 January 2022.

⁶¹² *ibid.*




⁶¹³ *ibid.*

⁶¹⁴ *ibid.*

8 The Right to Health

8.1 Article 12 of the ICESCR recognises the right to “physical and mental health”⁶¹⁵ and its enjoyment to the “highest attainable standard.”⁶¹⁶ In particular, the ICESCR delineates the right to health of children, the right to industrial and environmental hygiene, the State Parties’ responsibility to prevent various kinds of disease, and the right to access healthcare services.⁶¹⁷ The following are the issues that have been raised in the Concluding Observations to the Reports of the United Kingdom of Great Britain and Northern Ireland submitted pursuant to Articles 16 and 17 of the ICESCR:

8.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016

	Negative or insufficient developments
	Topic discussed with no positive or negative judgement
	Positive developments









































































Rights	Issue	Concluding Observations: Cycle and Year							
		VI 2016	V 2009	IV 2002	III 1997	II 1994	II 1985	I 1981	I 1980
Articles 12: right to health	Access to healthcare- discrimination of disadvantaged / marginalised								
	Access to healthcare- waiting times for surgery								
	Mental health- poor provision of services								
	Mental disabilities- impacts on general health								
	Mental health- suicide in NI and Scotland								
	Healthcare professional awareness of ICESCR								
	Public and health professional awareness of Alzheimer's, dementia								
	HIV/AIDs in Caribbean territories								
	Termination of pregnancy in NI								

Table 6: Overview of issues related to health raised by the Committee in each Concluding Observation, since the first periodic review in 1981.

⁶¹⁵ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 12 (1).

⁶¹⁶ *ibid.*

⁶¹⁷ *ibid.*, art 12 (2).

Waiting Times for Surgery

8.2 The third Concluding Observation, adopted in 1997, expressed its concerns regarding the fact that waiting time for surgeries could extend to **as long as eighteen months**, which, according to the Committee on Economic, Social and Cultural Rights, called into question whether the UK had made the utmost effort to realise Article 12 rights.⁶¹⁸ The Committee found the situation “**unacceptable**” and **recommended that the UK take immediate action to remedy the situation.**⁶¹⁹

Abortion in Northern Ireland

8.3 The sixth reporting cycle raised the issue of access to abortion services in Northern Ireland, where abortion was still criminalised in most circumstances, which could lead to an **increase in unsafe abortions** and have a disproportionate discriminatory impact on women **from low-income families**. The Committee recommended that abortion laws in Northern Ireland be suitably amended to make them compatible with **women’s “[fundamental] rights to health, life, and dignity.”**⁶²⁰ The issue had been raised, much in a similar vein, in 2009 in the combined fourth and fifth Concluding Observations. However, in 2009, the Committee limited its observations to merely noting with concern that the Abortion Act 1967 did not apply to Northern Ireland; the larger philosophical focus on the fundamental entitlement of women was absent as the Committee stuck to a technical legal proposal. Therefore, the UK was called upon to **amend the abortion laws in Northern Ireland** to bring them in conformity with the Abortion Act 1967, so that “clandestine and unsafe abortions” could be prevented in applicable fact scenarios.⁶²¹

⁶¹⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 15.

⁶¹⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 27.

⁶²⁰ CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 60 and 61.

⁶²¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 25.

Mental Disability and Mental Health Concerns

8.4 The Committee noted in 2016 that **there existed a lack of resources for provision on mental health services in the UK**, despite a legal duty created by the Health and Social Care Act 2012 to provide “**parity of esteem**” between physical and mental health. It also expressed concern about the inadequate implementation of mental health laws and the lack of mental health services for persons in detention.⁶²² The CESCR had addressed mental disability and mental health in far greater detail in 2009. Mental disability, which was by and large absent in 2016, received special mention in terms of the “**significantly poorer health conditions**” experiences by mentally disabled persons, as measured by susceptibility to a far greater number of diseases and lower life expectancy than their non-disabled peers. The Committee, therefore, recommended immediate action, specifically excoriating the UK for “**regressive measures taken in funding mental health services.**”⁶²³ It also addressed the issue of increasing suicides in Scotland and Northern Ireland due to difficulties in accessing the mental healthcare infrastructure. **The UK was accordingly called upon to improve said infrastructure by more widespread provision of psychological counselling services and the training of health professionals to spot and treat mental health problems.**⁶²⁴ It bears mentioning that the recent attention given to mental health goes well beyond how it was treated in the earlier cycles, wherein it is either not discussed at all, or, when, for instance, a question was posed to the Representative of the UK about the addiction to narcotics amongst the youth in 1981, he was unable to provide any statistics.⁶²⁵

⁶²² CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 57.

⁶²³ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 33.

⁶²⁴ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 35.

⁶²⁵ 'Seasonal Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 21.

Healthcare of Older Persons

8.5 The Committee in 2016 noted its ongoing concern about the **“persistent, serious shortcomings” in the provision of healthcare to older persons, especially mentioning dementia**. The issue of reports correlating the rise in mortality with a fall in pensions was also flagged as problematic.⁶²⁶ In this instance, the Committee made an explicit reiteration of its previous recommendations in 2009 about adequately training doctors and health-care professionals about the rights of older people and the treatment of such diseases as dementia and Alzheimer’s. The Committee also called for the provision of adequate pensionary benefits.⁶²⁷ **In 2009, the Committee had, as mentioned before, called for adequate training of doctors as well as healthcare professionals not only as regards dementia and Alzheimer’s**, but also about their obligations under the ICESCR in general. The Committee had also called for creating public awareness about the aforesaid diseases.⁶²⁸

Migrants’ Health and Iniquitous Access to Healthcare

8.6 In 2016, the Committee expressed concern that several disadvantaged communities, such as temporary and undocumented migrants, refugees, asylum seekers, Roma, Gypsies and Travellers continued to face discriminatory access to healthcare, which, in the case of migrants, originated from a legal instrument, the Immigration Act 2014.⁶²⁹ The UK was reminded of its obligation to provide healthcare to everyone without discrimination, a concern first raised in much more general terms in 2009, wherein the **UK was urged to reduce health inequalities by 10% by 2010**, which was to be measured by infant mortality and life expectancy at birth standard, that the UK had not yet set. The UK was also requested to **collect disaggregated data**

⁶²⁶ CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 59.

⁶²⁷ CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 60.

⁶²⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 34.

⁶²⁹ CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 55-56.

annually so that disparities in access to healthcare could be suitably assessed before the next review.⁶³⁰

8.2 Developments since 2016

8.2.1 Brexit

8.7 The European Union (Withdrawal) Act 2018⁶³¹, which affected the United Kingdom's exit from the European Union, widely referred to as Brexit, brought **an end to the application of the EU Charter on Fundamental Rights**⁶³² ('the Charter') within the UK. Concerns had been raised about the inconsistency in excluding the application of the Charter despite the retention of much other EU law.⁶³³ Article 35 of the Charter specifically enshrines a right to healthcare, and other provisions of the Charter, such as Articles 31 and 32, refer to the health of the right-bearers addressed therein.⁶³⁴ Further, the Charter provides that those rights enumerated therein which are coextensive in scope to rights enshrined in the European Convention on Human Rights⁶³⁵ shall be interpreted with reference to the latter instrument.⁶³⁶ The Act, therefore, was, in effect, a step towards the progressive realisation of the UK's obligations under the ICESCR, the removal of which has led to significant regression in the human rights protections enjoyed by UK citizens. Similarly, **the decisions of the Court of Justice of the European Union have lost statutory footing** in the UK post-Brexit⁶³⁷, even though it is stipulated that UK courts shall have regard to its case law whilst interpreting domestic legal provisions.⁶³⁸

⁶³⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 32.

⁶³¹ UK Public General Acts, 'European Union (Withdrawal) Act' (2018).

⁶³² European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02

⁶³³ 'Joint Committee on Human Rights Submission: European Union (Withdrawal) Bill Scrutiny' (*British Institute of Human Rights*, 20 November 2017) <http://docs.wixstatic.com/ugd/8a2436_ec4426d44abb41a8b1060a99bdfa53eb.pdf> accessed 16 December 2021

⁶³⁴ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

⁶³⁵ Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5.

⁶³⁶ UK Public General Acts, 'European Union (Withdrawal) Act' (2018), s. 52(3)

⁶³⁷ UK Public General Acts, 'European Union (Withdrawal) Act' (2018), s. 6(4)

⁶³⁸ Ibid.

8.8 Moreover, the effects of Brexit on the health infrastructure of the UK have had profound implications for the realisation of the right to health that extend beyond formal legal changes. **Access to medical supplies** has taken a hit due to an alternation in trade requirements such as customs regulations.⁶³⁹ **A shift to new routes of trade has been further disrupted** due to the regime of **border controls necessitated by the COVID-19 pandemic**.⁶⁴⁰ The competitiveness of the pharmaceutical industry has been negatively impacted, causing ripple effects with regards to the incentive to invest in businesses.⁶⁴¹ While the UK continues to participate in Horizon Europe, the EU's key funding programme for research and innovation, the **disparity in regulatory procedures** brought about by Brexit implies that the UK's ability to participate in cross-Europe clinical trials has been negatively impacted.⁶⁴² Even if the UK succeeds in negotiating favourable trade conditions with the EU in the long run, its **access to medical resources** vis-à-vis Europe is likely to be adversely affected.⁶⁴³

8.9 Brexit led to the UK's **exclusion from participation in EU agencies** such as the European Centre for Disease Control and Prevention ('ECDC'), European Statistical Office ('Eurostat'), as well as the Early Warning and Response System of the EU, that had considerable effects on the UK's ability to address the challenges raised by the COVID-19 pandemic.⁶⁴⁴ Even though the UK has now signed a Memorandum of Understanding ('MoU') with the ECDC⁶⁴⁵, the fact that it only managed to do so after almost a year and a half of the pandemic is a matter of considerable concern. In general, the uncertainty regarding the UK's participation in the agencies of the EU, such as the European Food Standards Agency ('EFSA')

⁶³⁹ Mark Dayan, 'What Happened to Those Brexit Medicine Shortages?' (*Nuffield Trust*, 29 September 2021) <<https://www.nuffieldtrust.org.uk/news-item/what-happened-to-those-brexit-medicines-shortages>> accessed 28 January 2022.

⁶⁴⁰ Mark Dayan, Nick Fahy, Tamara Hervey, Martha McCarey, Holly Jarman, and Scott Greer, *Understanding the Impact of Brexit on Health in the UK*, (Nuffield Trust, 2020) 18.

⁶⁴¹ 'Brexit: Key Implications for the Healthcare and Life Sciences Sector' (*Baker McKenzie*, 2020) <https://www.bakermckenzie.com/-/media/files/insight/topics/brexit/healthcare_brexit.pdf> accessed 28 January 2022.

⁶⁴² 'Brexit and Beyond: Clinical Trials', (*Wellcome*, 11 February 2019) <<https://cms.wellcome.org/sites/default/files/brexit-and-beyond-clinical-trials.pdf>> accessed 28 January 2022

⁶⁴³ Mark Dayan, Nick Fahy, Tamara Hervey, Martha McCarey, Holly Jarman, and Scott Greer, *Understanding the Impact of Brexit on Health in the UK*, (Nuffield Trust, 2020) 18.

⁶⁴⁴ Mark Dayan, 'How will Brexit affect the UK's response to coronavirus.', (*Nuffield Trust*, 2020) <<https://www.nuffieldtrust.org.uk/files/2020-10/coronavirus-brexit-briefing-3.pdf>> accessed 28 January 2022.

⁶⁴⁵ 'ECDC signs memorandum of understanding with UK Health Security Agency', (*European Centre for Disease Prevention in Control*, 1 December 2021) <https://www.ecdc.europa.eu/en/news-events/ecdc-signs-memorandum-understanding-uk-health-security-agency> accessed 28 January 2022.

and the Rapid Alert System for Food and Feed (‘RAASF’) is expected to **lower standards of protection**, further endangering UK citizens’ quality of health.⁶⁴⁶

8.10 The most catastrophic impact of Brexit has been on the **workforce of the National Health Service (‘NHS’)**.⁶⁴⁷ Since the free movement of labour between the UK and the EEA has come to an end as an effect of Brexit, **precipitous decline in the numbers of nursing and care staff** from the EEA, who are now subject to similar immigration rules as immigrants from non-EEA countries, have been observed.⁶⁴⁸ Even though the immigration policy governing doctors and nurses are characterised by significant relaxations, such as a fast-track visa route and an exemption from payment of the Immigration Health Surcharge, the shortfall caused by Brexit is so severe that fulfilling it is expected to take significant time.⁶⁴⁹ Moreover, other social care workers do not fall within the immigration policy as outlined above; therefore, **recruitment shortfalls** in their numbers are likely to cause **significant pressure on the existing workforce**.⁶⁵⁰

⁶⁴⁶ Tim Lang and Erik P. Millstone, ‘Post-Brexit Food Standards’ (2019) 393 *The Lancet* 1199.

⁶⁴⁷ May C. I. van Schalkwyk, Tamara K. Hervey, Martha McCarey, Mark Dayan, Pepita Barlow, Martin McKee, ‘How will Brexit affect the healthcare workforce’ (2020) 371 *BMJ* 4439.

⁶⁴⁸ Jonathon Holmes, ‘Brexit and the end of the transition Period: what does it mean for the health and care system’, (*The King’s Fund*, 11 January 2021) <<https://www.kingsfund.org.uk/publications/articles/brexit-end-of-transition-period-impact-health-care-system>> accessed 28 January 2022.

⁶⁴⁹ *ibid.*

⁶⁵⁰ Silvia Miele, ‘The Impact of Brexit on Adult Social Care: Another Layer of Uncertainty?’, (*The Social Policy Blog*, 18 May 2021) <<https://socialpolicyblog.com/2021/05/18/the-impact-of-brexit-on-adult-social-care-another-layer-of-uncertainty/>> accessed 28 January 2022.

8.2.2 Austerity Measures

8.11 The austerity era in the UK, which lasted between 2010 and 2019, has had a significant impact on the healthcare infrastructure of the country, which has in turn led to adverse impacts on the levels of patient care. While the austerity era **did not involve direct spending cuts** as regards the NHS, it was characterised by **real-term reductions in the budget** due to fiscal constraints.⁶⁵¹ As a result, in terms of real growth, the **NHS' budget plunged from 3.8% in the 2000s to 0.41% in the 2010s**.⁶⁵² Similarly, in the **social care sector**, annual growth went down from **2.2% in the 2000s to 1.57% in the 2010s**.⁶⁵³ Healthcare reforms during the austerity era were introduced in the form of the **Health and Social Care Act 2012**⁶⁵⁴, a controversial piece of legislation which decentralised the NHS' budgetary and decision-making processes, leading to concerns regarding **accountability on the part of local authorities**.⁶⁵⁵

8.12 The effects of such measures on the health of the citizens of the UK were starkly evident. Between 2010 and 2015, **the share of population reporting good health declined by 10%**.⁶⁵⁶ Austerity-era policies resulted in an **8% jump in the rates of suicide in 2008**, which had declined by 2011, only to increase by a 9.1% increase in the period between 2011 and 2015.⁶⁵⁷ The austerity period was also marked by a significant increase in mental health issues, especially in persons from economically disadvantaged communities.⁶⁵⁸ This was significantly accompanied by significant funding disparities between mental and physical health services.⁶⁵⁹ Even though the government has taken steps to counteract his shortfall and establish 'parity of

⁶⁵¹ Johnathan Watkins, Wahyu Wulaningsih, Charlie Da Zhou, Dominic C. Marshall, Guia D. C. Sylianteng, Phyllis G. Dela Rosa, Viveka A. Miguel, Rosalind Raine, Lawrence P. King, and Mahiben Maruthappu, 'Effects of health and social care spending constraints on mortality in England: a time trend analysis' (2017) 7(11) BMJ Open <https://bmjopen.bmj.com/content/7/11/e017722> accessed 28 January 2022.

⁶⁵² *ibid.*

⁶⁵³ *Ibid.*

⁶⁵⁴ UK Public General Acts, 'Health and Social Care Act 2012'.

⁶⁵⁵ Kath Checkland, Pauline Allen, Anna Coleman, Julia Segar, Imelda McDermott, Stephen Harrison, Christina Petsoulas, and Stephen Peckham, 'Accountable to whom, for what? An exploration of the early development of Clinical Commissioning Groups in the English NHS' (2013) 3(12) BMJ Open <<https://bmjopen.bmj.com/content/3/12/e003769.citation-tools>> accessed 28 January 2022.

⁶⁵⁶ 'Tipping the scales: Exploring austerity and public health in the UK' (*The International Longevity Centre UK*, 2020) <<https://ilcuk.org.uk/wp-content/uploads/2020/01/Tipping-the-scales-Exploring-austerity-and-public-health-in-the-UK.docx.pdf>> accessed 28 January 2022.

⁶⁵⁷ Martin Knapp, 'Mental Health in the Age of Austerity' (2012) 15(3) Evidence Based Mental Health 54.

⁶⁵⁸ Ian Cummins, 'The Impact of Austerity on Mental Health Service Provision: A UK Perspective' (2018) 15(6) International Journal of Environmental Research and Public Health 1145.

⁶⁵⁹ *Breaking Point: the crisis in mental health funding*, (Trades Union Congress, 2018)

esteem' through such measures as increased budgetary allocation from 2018 onwards,⁶⁶⁰ and the introduction of the Mental Health Investment Standard, which requires Clinical Commissioning Groups ('CCG'), local budgetary authorities established under the Health and Social Care Act 2012,⁶⁶¹ real spending has in fact fallen, leading to conditions wherein less than half of such persons as require mental health assistance and care can access such services.⁶⁶² Budgetary deficits have led **to massive understaffing of mental health professionals, such as nurses**, further exacerbating the situation.⁶⁶³ The lack of funding is expected to have generational knock-on effects, with children and adolescents with mental health challenges being unable to access services when they most require them.⁶⁶⁴ Similarly, **queer populations** have borne a higher brunt of the effect of austerity cuts in **mental health services**.⁶⁶⁵ Generally, estimates vary between 120,000 to 130,000 deaths that may be attributed to staffing constraints caused by austerity-era measures.⁶⁶⁶ The general life expectancy in the UK has stopped improving⁶⁶⁷ and has fallen for economically disadvantaged groups.⁶⁶⁸

⁶⁶⁰ *ibid*

⁶⁶¹ 'Analysis: Is your CCG meeting the national mental health investment standard?' (*Royal College of Psychiatrists*) <<https://www.rcpsych.ac.uk/improving-care/campaigning-for-better-mental-health-policy/five-year-forward-view/mental-health-investment-standard>> accessed 28 January 2022.

⁶⁶² Ian Cummins, 'The Impact of Austerity on Mental Health Service Provision: A UK Perspective' (2018) 15(6) *International Journal of Environmental Research and Public Health* 1145.

⁶⁶³ *Breaking Point: the crisis in mental health funding*, (Trades Union Congress, 2018)

⁶⁶⁴ Rachel M. Thompson and Srinivasa Vittal Katikireddi, 'Mental health and the jilted generation: Using age-period-cohort analysis to assess differential trends in young people's mental health following the Great Recession and austerity in England' (2018) 214 *Social Science and Medicine* 133.

⁶⁶⁵ Malen Davies, Helen Porter, and Martin Mitchell, *Implications to reductions to public spending for LGB and T people and services*, (Natcen Social Research, 2016) https://www.unison.org.uk/content/uploads/2016/11/NatCen-research-report_Implications-of-reductions-to-public-spending-on-LGB-and-T-people-and-services_Nov_2016.pdf accessed 28 January 2022.

⁶⁶⁶ Johnathan Watkins, Wahyu Wulaningsih, Charlie Da Zhou, Dominic C. Marshall, Guia D. C. Sylianteng, Phyllis G. Dela Rosa, Viveka A. Miguel, Rosalind Raine, Lawrence P. King, and Mahiben Maruthappu, 'Effects of health and social care spending constraints on mortality in England: a time trend analysis' (2017) 7(11) *BMJ Open* <https://bmjopen.bmj.com/content/7/11/e017722> accessed 28 January 2022; Dean Hochlaf, Harry Quilter-Pinner and Tom Kibasi, *Ending the Blame Game: The Case for a New Approach to Public Health and Prevention* (Institute for Public Policy Research, 2019) <https://www.ippr.org/files/2019-06/public-health-and-prevention-june19.pdf#page=8> accessed 29 January 2022.

⁶⁶⁷ Edward Morgan and Stephen Rozée, 'National Life Tables – Life Expectancy in the UK: 2017 to 2019' (*Office of National Statistics*, 24 September 2020) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/lifeexpectancies/bulletins/nationallifetablesunitedkingdom/2017to2019#toc> accessed 28 January 2022.

⁶⁶⁸ *ibid*.

8.13 The effects of austerity on the quality of patient care have been equally insidious.⁶⁶⁹ Waiting times, both in terms of the **length of time** patients spend in Accidents and Emergency ('A&E') departments, as well as between GP referral and treatment, **have increased**.⁶⁷⁰ Moreover, several areas of care, especially mental health, are not even subject to national waiting time targets, which causes obvious accountability concerns.⁶⁷¹ Moreover, patients suffering from such issues as being unable to reach their General Practitioners ('GPs') or book appointments; due to being deemed ineligible based on CCG criteria for receiving certain kinds of treatments.⁶⁷²

8.2.3 COVID-19 Pandemic

8.14 The COVID-19 pandemic has led to the emergence of a host of human rights issues, which the UN and the WHO, as well as the UN Special Rapporteur on the Right to Health, have underscored should be addressed with reference to the right to health obligations of the UK under the ICESCR.⁶⁷³ As early as May 2020, an assessment of the response of the UK government to the pandemic concluded that **several human rights violations had been committed**.⁶⁷⁴ As regards specific healthcare-related concerns, the assessment foregrounded the inadequate provision of **personal protective equipment ('PPE') to health and social care personnel, rapidly changing guidance on the use of PPE, and the discriminatory treatment disabled persons and older people received in GP surgeries and care homes**, proceeding from their characterisation as "recipients of services rather than individuals with full spectrum of human rights."⁶⁷⁵

⁶⁶⁹ Ruth Robertson, 'Six ways in which NHS financial pressures can affect patient care', (*The King's Fund*, 31 March 2016) <https://www.kingsfund.org.uk/publications/six-ways> accessed 28 January 2022

⁶⁷⁰ *ibid.*

⁶⁷¹ *ibid.*

⁶⁷² *ibid.*

⁶⁷³ Judith Bueno de Mesquita, Claire Lougarre, Lisa Montel, and Sharifa Sekalala, 'The Government's Response to COVID-19: How to Further Realise the Right to Health' <<https://www.lshtm.ac.uk/media/41016>> accessed 16 December 2021.

⁶⁷⁴ 'A Preliminary Human Rights Assessment of Legislative and Regulatory Responses to the COVID-19 Pandemic Across 11 Jurisdictions' (*Bonaverio Institute of Human Rights*, 6 May 2020) <https://www.law.ox.ac.uk/sites/files/oxlaw/v3_bonaverio_reports_series_human_rights_and_covid_19_20203.pdf> accessed 16 December 2021.

⁶⁷⁵ *ibid.*

8.15 More generally, inadequate access to both primary and secondary healthcare has led to not only a high number of fatalities in COVID-19 patients, but also the **worsening of non-COVID-19-related mental and physical health challenges**, due to lack of access to hospitals and general practitioners.⁶⁷⁶ It has also been noted that since the Government failed to adequately track the greater vulnerability of lower-income groups, ethnic minorities, persons with pre-existing conditions, and older people to the coronavirus, it has failed to fulfil the large duty of non-discrimination within the ICESCR.⁶⁷⁷ Other issues that have been highlighted include the **blanket imposition of Do Not Attempt Cardiopulmonary Resuscitation ('DNACR') notices** to some categories of persons without the involvement of the concerned individual and their families.⁶⁷⁸ Again, this practice has been criticised as **being violative of the non-discrimination guarantees inherent in the ICESCR**, as well as being violative of the ECHR and domestic legislation.⁶⁷⁹

8.2.4 Non-Discrimination and Equality

8.16 The Equality Act 2010⁶⁸⁰ currently holds the field as far as the guarantees of equal protection and non-discrimination in the UK are concerned, though as far as the ICESCR is concerned, **Section 1 of the Act**, which lays positive obligations on the part of public sector authorities to ensure outcomes of socio-economic equality **has not been made applicable in England**.⁶⁸¹ Even prior to the COVID-19 pandemic⁶⁸², several vulnerable minority groups in the UK suffered from iniquitous health outcomes, some of which have been discussed below:

⁶⁷⁶ Lisa Montel, Anuj Kapilashrami, Michel P. Coleman, and Claudia Allemani, 'The Right to Health in Times of Pandemic: What Can We Learn from the UK's Response to the COVID-19 Outbreak?' (2020) *Health and Human Rights Journal*, 22/2

⁶⁷⁷ *ibid.*

⁶⁷⁸ Joint Committee on Human Rights, *The Government's Response to COVID-19: Human Rights* (HC 2020-09 265)

⁶⁷⁹ *ibid.*

⁶⁸⁰ UK Public General Acts, 'Equality Act' (2010).

⁶⁸¹ Koldo Kasla, 'The socio-economic duty: a powerful idea hidden in plain sight in the Equality Act' (*Oxford Human Rights Hub*, 14 May 2019) <https://ohrh.law.ox.ac.uk/the-socio-economic-duty-a-powerful-idea-hidden-in-plain-sight-in-the-equality-act/> accessed 28 January 2022.

⁶⁸² 'Disparity in the risks and outcomes of COVID-19', (*Public Health England*, 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908434/Disparities_in_the_risk_and_outcomes_of_COVID_August_2020_update.pdf>

Persons with Learning Disabilities

8.17 Persons with learning disabilities have shorter life expectancy; their life expectancy is shorter by **18 and 14 years, for women and men respectively in the UK.**⁶⁸³ Similarly, between 2017 to 2018, it was found that the median age at death was **59 and 60 for women and men respectively, far lower than the 86 and 83 figure for non-disabled individuals.**⁶⁸⁴ The median age was low as 40 for persons with profound and multiple learning disabilities.⁶⁸⁵ The disparities exist for a variety of reasons, including lack of understanding on the part of the staff, incorrect diagnoses, inadequate aftercare, and the lack of reasonable adjustments for accessing healthcare settings, which lead to several avoidable deaths.⁶⁸⁶

Refugees and Asylum Seekers

8.18 The primary cause of discrimination against refugees and asylum seekers is the restrictions imposed upon these groups regarding access to health care due to their immigration status.⁶⁸⁷ **Thus, the most vulnerable populations within these groups, such as pregnant women, recent mothers, trafficked women, undocumented migrants, and detenus** are most likely to be unable to access health care, despite being most in need of medical attention.⁶⁸⁸ Other factors include such cross-cutting socio-economic disadvantages as poor housing conditions, inadequate information on how to access medical care, language barriers, and poor workplace health standards.⁶⁸⁹

⁶⁸³ Jacqui Thornton, 'People with learning disabilities have lower life expectancy and cancer screening rates' (2019) 364 BMJ 1404.

⁶⁸⁴ *ibid.*

⁶⁸⁵ *ibid.*

⁶⁸⁶ Pauline Heslop, Peter S. Blair, Peter Fleming, Matthew Hoghton, Anna Marriott, Lesley Russ, 'The Confidential enquiry into premature deaths of people with intellectual disabilities in the UK: a population based study' (2013) 383 The Lancet 889.

⁶⁸⁷ Hiranthi Jayaweera, *Health and access to health care of migrants in the UK*, (Race Equality Foundation, 2010) <<https://raceequalityfoundation.org.uk/wp-content/uploads/2018/03/health-brief19.pdf>> accessed 28 January 2022.

⁶⁸⁸ *ibid.*

⁶⁸⁹ *ibid.*

Sexual Orientation and Gender Identity

8.19 According to a survey conducted by the government in 2017, **16% of respondents had a negative experience accessing healthcare due to their sexual orientation, and 38% due to their gender identity.**⁶⁹⁰ Nearly half of the respondents could not access mental health services due to long waiting times, and an astounding 80% of transgender respondents could not access gender identity clinics for the same reason.⁶⁹¹

Maternal Health

8.20 While maternal mortality has fallen overall, **38 out of 100,000 Black women** are likelier to die in childbirth as compared to **7 out of 100,000 white women.**⁶⁹² The numbers for Asian and mixed ethnicity women are **13 and 23, respectively.**⁶⁹³ The failure to include diverse participants in research, which leads to the development of racially insensitive diagnostic techniques and medical services, has been found to be the major cause of such disparity.⁶⁹⁴

⁶⁹⁰ ‘LGBT Action Plan: Improving the Lives of Lesbian, Gay, Bisexual, and Transgender People’ (Government Equality Office, 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721367/GEO-LGBT-Action-Plan.pdf> accessed 28 January 2022.

⁶⁹¹ LGBT Action Plan: Improving the Lives of Lesbian, Gay, Bisexual, and Transgender People’ (Government Equality Office, 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721367/GEO-LGBT-Action-Plan.pdf> accessed 28 January 2022.

⁶⁹² Joint Committee on Human Rights, *Black People, Racism and Human Rights* (HC 2019-20, HC-559) 16.

⁶⁹³ *ibid.*

⁶⁹⁴ *ibid.*

9 The Right to Education

9.1 This section covers matters related to Articles 13 and 14 of the [ICESCR](#) addressing the **right to education**, which according to the Committee's [General Comment No 13](#) is not only a human right in its own right, but also a **gateway right to the realisation of other human rights**. The CESCR calls it an “**empowerment right**” that provides a pathway out of poverty and the necessary means for communal participation.⁶⁹⁵ Article 13 reflects that idea by dealing with the purpose of the right of education for *everyone* to fully develop “the human personality and the sense of its dignity”,⁶⁹⁶ enable effective participation in a free society and promote “understanding, tolerance and friendship among all nations, [...] racial, ethnic, or religious groups”.⁶⁹⁷ The remainder of Article 13, *inter alia*, addresses **the right to receive an education at all educational levels**, and **educational freedom**, including parents' liberty of choice in terms of their children's school, and to the right of individuals and institutions to “establish or direct educational institutions”.⁶⁹⁸ Article 14, on the other hand, only focuses on the States' obligation to the **progressive realisation of the free and compulsory delivery of primary education**.⁶⁹⁹ However, the importance the Committee attached to the right to education as a gateway right is not necessarily reflected in its Concluding Observations on the UK – **education has received relatively little attention over the years** and is only mentioned once in its first review cycle.

⁶⁹⁵ CESCR, 'General Comment No 13: The Right to Education (Art 13)' (8 December 1999) UN Doc E/C.12/1999/10, para 1.

⁶⁹⁶ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 13 (1).

⁶⁹⁷ *ibid.*

⁶⁹⁸ *ibid.*, art 13 (2)-(4); CESCR, 'General Comment No 13: The Right to Education (Art.13)' (8 December 1999) UN Doc E/C.12/1999/10, para 6, 28-30.

⁶⁹⁹ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 14.

9.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016

	Negative or insufficient developments
	Positive developments

Rights	Issue	Concluding Observation: Cycle and Year							
		VI 2016	V 2009	IV 2002	III 1997	II 1994	II 1985	I 1981	I 1980
Articles 13-14: right to education	Educational structure in Northern Ireland: segregation between religious (state/Catholic) and integrated schools	-	-			-	-		-
	Disparity in attainment of certain groups			-	-		-	-	-
	Disproportionate effect of the lack of a universal pre-school education scheme on 16-18 years old and disabled children	-	-	-	-		-	-	-
	Discrimination in access of certain groups	-					-	-	-
	Corporal punishment in private schools	-	-	-		-	-	-	-
	Permanent exclusion from school	-	-			-	-	-	-
	Introduction of a programme for lifelong learning	-	-	-		-	-	-	-
	Educational provisions for prisoners	-			-	-	-	-	-
	Higher education: tuition fees and student loans				-	-	-	-	-
	Financial support for private schools in developing countries		-	-	-	-	-	-	-

Table 7: Overview of issues related to education raised by the Committee in each Concluding Observation, since the first periodic review in 1981.

9.2 The table above illustrates the issues relating to Articles 13 and 14 that were raised by the CESCR in the UK's six review cycles since 1980. There are **four notable issues** that the Committee has placed emphasis on continuously over the past 40 years – the **religious segregation of the educational system in NI, disparities in educational attainment, discrimination in access to education, and tuition fees and student loans**. Apart from discrimination relating to educational access, all concerns were addressed in the most recent Concluding Observations of 2016. Over the years, there are **several concerns that have only**

been addressed once – the lack of a universal pre-school education system (1994), corporal punishment in private schools (1997), education for prisoners (2002), and the UK’s financial support for private schools in Global Southern countries (2016). Relating to the last one, the Committee, based on the extensive [shadow report of the Right to Education Project](#),⁷⁰⁰ introduced a new **extraterritorial dimension to the UK’s Article 14 obligations**. The CESCR highlights the UK’s contribution to undermining the quality of and access to free public education by financially engaging with private education projects in Global Southern countries.⁷⁰¹ Finally, although the report on Northern Ireland of [the Special Rapporteur on Education](#) (2003)⁷⁰² and [shadow reports](#) in both 2009⁷⁰³ and 2016⁷⁰⁴ repeatedly mention bullying and harassment in schools, and the [EHRC’s human rights tracker](#) singles it out as a separate category,⁷⁰⁵ the CESCR has interestingly never mentioned it in the UK’s 40 years of reporting.

9.3 Given that education is a devolved matter in the UK,⁷⁰⁶ the following sub-sections will, if relevant, differentiate between the legal situations and recommendations for the UK, Scotland, Wales, and Northern Ireland.

⁷⁰⁰ The Right to Education Project, 'Committee on Economic, Social and Cultural Rights – 58th Session – Review of the UK: Alternative Report – Brief Summary – The UK's Support of the Growth of Private Education through its Development Aid: Questioning its Responsibilities as Regards its Human Rights Extraterritorial Obligations' (April 2016).

⁷⁰¹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 14-15.

⁷⁰² Commission on Human Rights, 'The Right to Education, Report Submitted by Katarina Tomaševski, Special Rapporteur, in Accordance with Commission Resolution 2002/23, Mission to the United Kingdom (Northern Ireland)' (5 February 2003) UN Doc E/CN.4/2003/9/Add.2, 2.

⁷⁰³ Scottish Association for Mental Health, 'Submission of NGO Report to UN Committee on Economic, Social and Cultural Rights - UK Hearing on 12th - 13th May 2009' (n/a) para 5.5,

⁷⁰⁴ Children's and Young People's Commissioner, 'The Children and Young People's Commissioner Scotland Report on the Application of the ICESCR in Scotland' (n/a) para 4.33; Equal Rights Trust, 'Alternative Report submitted to the Committee on Economic, Social and Cultural Rights at its 58th Session in Relation to the Sixth Periodic Report Submitted by: the United Kingdom of Great Britain and Northern Ireland' (May 2016) 62 (c).

⁷⁰⁵ EHRC, 'Check on UK Government Progress' (16 September 2021) <https://humanrightstracker.com/en/overarching-progress/> accessed 20 November 2021.

⁷⁰⁶ Engender, 'Implementation of the International Covenant on Economic, Social and Cultural Rights: Comments on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (April 2009) 7.

The Religious Segregation of the Educational System in Northern Ireland

9.4 The CESCR's first Concluding Observations on the UK only mention education-related concerns once with respect to Northern Ireland educational separation along religious lines – many of Northern Ireland's children were educated in either state schools (Protestant) or Catholic schools.⁷⁰⁷ However, this is a concern that has been taken up again by the Committee between 1997 and 2002. In 1997, it voices its concern over the heavy segregation in the NI's school system, although 30% of NI's parents⁷⁰⁸ had expressed their preference to send their children to integrated schools.⁷⁰⁹ Consequently, the Committee recommends the establishment of integrated schools in areas with a demand for them.⁷¹⁰ Both the Committee's concern and its recommendation are reiterated in the same tone in the CESCR's fourth Concluding Observations.⁷¹¹ The weight of the Committee's concern is reinforced by the [Special Rapporteur on the Right to Education](#)'s, Katarina Tomaševski, visit to Northern Ireland in 2002 with the mission to analyse the educational system's human rights dimensions after the Troubles.⁷¹² Tomaševski found that residential segregation along religious lines was reflected in educational segregation, where 94% of the children attend either a Catholic or state (Protestant) school according to their parents' choice.⁷¹³ She notes that there is a persistent presence of sectarian harassment and social exclusion, which victimises both teachers and

⁷⁰⁷ CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 16th Meeting' (24 September 1981) UN Doc E/1981/WG.1/SR.16, para 40; CESCR, 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Summary Record of the 17th Meeting' (11 November 1981) UN Doc E/1981/WG.1/SR.17, para 18.

⁷⁰⁸ Note that the Integrated Education Fund reported in June 2021 that 71% of the 2,000 survey participants in Northern Ireland agree integrated schools should be the main education model in Northern Ireland. - Integrated Education Fund, 'Northern Ireland Attitudinal Poll: Summary Report' (June 2021) 3-4.

⁷⁰⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 18.

⁷¹⁰ *ibid*, para 29.

⁷¹¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 23, 42.

⁷¹² Commission on Human Rights, 'The Right to Education, Report Submitted by Katarina Tomaševski, Special Rapporteur, in Accordance with Commission Resolution 2002/23, Mission to the United Kingdom (Northern Ireland)' (5 February 2003) UN Doc E/CN.4/2003/9/Add.2.

⁷¹³ *ibid*, para 15, 33.

pupils which poses an important obstacle to the full enjoyment of the right to education. Therefore, the ideal solution would be all-inclusive schooling, which is an important instrument for the banishment of stereotypes and negative attitudes, and ultimately an inclusive society, according to Tomaševski.⁷¹⁴ However, the Special Rapporteur does not offer any concrete recommendations on the attainment of this all-inclusive educational model, and the issue of educational segregation along religious lines in Northern Ireland is not resumed in the CESCR's later Concluding Observations on the UK, despite it being addressed in the [British Irish Rights Watch 2009 shadow report](#).⁷¹⁵

Disparities in Educational Attainment

9.5 In its second Concluding Observations on the UK, the Committee highlights its particular concern over the situation of disadvantaged groups in the education system, especially with regard to the “grave disparities” in educational attainment based on “social origin” and region of origin.⁷¹⁶ Although the CESCR uses strong language to express its concern, the issue is not taken up again until 2009. Considering that various 2009 [shadow reports](#) to the Committee address the concern of lower school performance of ethnic minorities in NI,⁷¹⁷ Irish Travellers, children experiencing poverty, and children who have been in care,⁷¹⁸ the issue was resumed by the CESCR in its fifth Concluding Observations. The Committee uses similarly strong wording by referring to the “significant” disparities in educational attainment and dropout rates based on being a child from an ethnic, religious, or national minority family.⁷¹⁹ Consequently, it recommends the state “adopt all appropriate measures to reduce the

⁷¹⁴ *ibid*, para 7, 28.

⁷¹⁵ British Irish Rights Watch (BIRW), 'Submission to the United Nations Economic and Social Council Concerning the United Kingdom's Compliance With the International Covenant on Economic, Social and Cultural Rights' (March 2009) 10.

⁷¹⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 12.

⁷¹⁷ Engender, 'Implementation of the International Covenant on Economic, Social and Cultural Rights: Comments on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (April 2009) 5.

⁷¹⁸ Committee on the Administration of Justice (CAJ), 'Submission from the Committee on the Administration of Justice (CAJ) to the United Nations Committee on Economic, Social and Cultural Rights' (March 2009) 13.

⁷¹⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 36.

achievement gap in terms of school performance”⁷²⁰ for these children. More concretely, it proposes providing English-language courses if needed, undertaking studies to address the potential correlation between social environment and school failure, and avoiding minority students’ overrepresentation in classes for children with learning disabilities.⁷²¹ The concern did not lose importance in the UK’s sixth review cycle, with [shadow reports](#) continuously raising their concern over the inequalities in educational achievement based on national origin,⁷²² gender, economic background, ethnicity and (dis)ability.⁷²³ The Committee, therefore, addresses the “persistence of significant inequalities in educational attainment” primarily based on ethnicity, religion, national or social origin, and economic background.⁷²⁴ It reiterates its 2009 Concluding Observations and specifically refers to the need for reconsidering austerity programmes and reducing *de facto* educational discrimination.⁷²⁵

Discrimination Relating to Access to Education

9.6 With regard to discrimination in *access* to education, the CESCR’s second Concluding Observations highlight the adoption of the Education Act 1993 and the Code of Practice on the Identification and Assessment of Special Educational Needs 1994, which aims at including children with special educational needs in mainstream schools whenever possible, as a positive development.⁷²⁶ Yet, at the same time, it expresses its regret over the *de facto* scarcity of opportunities for disabled children’s participation in the mainstream educational system.⁷²⁷

⁷²⁰ *ibid.*

⁷²¹ *ibid.*

⁷²² Equal Rights Trust, 'Alternative Report submitted to the Committee on Economic, Social and Cultural Rights at its 58th Session in Relation to the Sixth Periodic Report Submitted by: the United Kingdom of Great Britain and Northern Ireland' (May 2016), para 61.

⁷²³ EHRC, 'Socio-Economic Rights in the UK, Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK’s implementation of ICESCR' (April 2016) 58; Just Fair, 'Implementation of the International Covenant on Economic, Social and Cultural Rights in the United Kingdom of Great Britain and Northern Ireland' (October 2015) 210.

⁷²⁴ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 63.

⁷²⁵ *ibid.*

⁷²⁶ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 4.

⁷²⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great

This concern reoccurs in all of the Committee’s Concluding Observations until and including 2009. Whereas the CESCR mentions the UK’s “significant progress” in 1997 with regards to improving access to education for Travellers and Gypsies,⁷²⁸ it notes its concern in the 2002 Concluding Observations about the *de facto* ethnic and (dis)ability-based discrimination in education and “urges” the UK to combat it.⁷²⁹ Access to education for disabled children is then taken up again in the Special Rapporteur on the Right to Education’s report, in which Tomaševski states that disabled children are neglected in mainstream schools in Northern Ireland, and Travellers are facing intersectional discrimination in the educational system in Northern Ireland.⁷³⁰ The general concern of educational access is again addressed in 2009 by the Committee expressing its continued concern over the practical discrimination of disabled children and ethnic minorities in education despite the legislative progress and its recommendation for the adoption of a comprehensive anti-discrimination law also applying to Northern Ireland.⁷³¹ The Committee taking up the issue reflects the concerns raised by the submitted [shadow reports](#) for the 2009 review cycle, which repeatedly highlight discrimination relating to access to education for children in care, children from economically disadvantaged backgrounds, refugee and asylum-seeking children, children from ethnic or national minority

Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (21 December 1994) UN Doc E/C.12/1/Add.19, para 13.

⁷²⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 6.

⁷²⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 14, 31.

⁷³⁰ Commission on Human Rights, 'The Right to Education, Report Submitted by Katarina Tomaševski, Special Rapporteur, in Accordance with Commission Resolution 2002/23, Mission to the United Kingdom (Northern Ireland)' (5 February 2003) UN Doc E/CN.4/2003/9/Add.2, para 19-20, 29.

⁷³¹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 16.

backgrounds, and disabled children in England,⁷³² Northern Ireland,⁷³³ Scotland,⁷³⁴ and the UK generally.⁷³⁵ The CESCR has not made any reference to concerns in relation to the discriminatory access to education in its sixth Concluding Observations. Although considering that a significant number of [shadow reports](#) for the 2016 review cycle bring up such concerns,⁷³⁶ and given that it is the most mentioned education-related issue overall, it does seem to be an ever-relevant issue.

Permanent Exclusion from School

9.7 In spite of not appearing in any of the Concluding Observations before 1997, the Committee expresses its concern over 13,000 children's permanent school exclusion disproportionately affecting children of an African-Caribbean origin and recommends formulating clear criteria for school exclusions. It also asks the UK to report on government

⁷³² EHRC, 'Submission on the United Kingdom's Fifth Periodic Report under the International Covenant on Economic Social and Cultural Rights' (April 2009) 25, 38; The children's legal centre, 'The Right to Education in England: Alternative Report to the Committee on Economic, Social and Cultural Rights' (September 2008) 4.

⁷³³ CAJ, 'Submission from the Committee on the Administration of Justice (CAJ) to the United Nations Committee on Economic, Social and Cultural Rights' (March 2009) 13; Northern Ireland Commissioner for Children and Young People (NICCY), 'Submission by the Northern Ireland Commissioner for Children and Young People (NICCY) to UN Committee on Economic, Social and Cultural Rights on the Implementation of the International Covenant on Economic, Social and Cultural Rights in Northern Ireland' (n/a); Save the Children (Northern Ireland), 'International Covenant on Economic, Social and Cultural Rights: Save the Children Submission (Northern Ireland)' (April 2009) 2, 4.

⁷³⁴ EHRC, 'Submission on the United Kingdom's Fifth Periodic Report under the International Covenant on Economic Social and Cultural Rights' (April 2009) 39.

⁷³⁵ *ibid* 44.

⁷³⁶ Children's and Young People's Commissioner, 'The Children and Young People's Commissioner Scotland Report on the Application of the ICESCR in Scotland' (n/a) para 4.34; Equal Rights Trust, 'Alternative Report Submitted to the Committee on Economic, Social and Cultural Rights at its 58th Session in Relation to the Sixth Periodic Report Submitted by: the United Kingdom of Great Britain and Northern Ireland' (May 2016) para 63; EHRC, 'Socio-Economic Rights in the UK, Updated Submission to the UN Committee on Economic, Social and Cultural Rights in Advance of the Public Examination of the UK's Implementation of ICESCR' (April 2016) 62-63; Human Rights Consortium, 'Submission from the Human Rights Consortium to the United Nations Human Rights Committee on Economic, Social and Cultural Rights (CESCR's) Review of the UK's 6th Periodic Report' (April 2016) 8, 58-60; Northern Ireland Human Rights Commission, 'Northern Ireland Human Rights Commission Submission to the UN Committee on Economic Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR' (April 2016) 14; Participation and the Practice of Rights, 'Shadow Report to the United Nations Committee on Economic, Social and Cultural Rights' Examination of the United Kingdom's 6th Periodic Report' (May 2016) 28; Sisters of Frida, 'Submission on the Rights of Persons with Disabilities for the CESCR Committee's Review of the United Kingdom' (May 2016) 2.

programmes providing alternative training for excluded young people.⁷³⁷ The issue seems to have been at least partially resolved by the next review cycle since the CESCR congratulates the UK on taking measures to reduce permanent exclusions from school.⁷³⁸ However, it is important to note that as of September 2021, the [EHRC's human rights tracker](#) still considers school exclusions and “managing ‘challenging behaviour’” in the UK to be of concern. Certain groups remain disproportionately impacted by unimplemented reforms concerning the regulation of school exclusions.⁷³⁹

Tuition Fees and Student Loans

9.8 Lastly, with the UK's introduction of tuition fees and student loans in 1998, a new issue arose as part of the 2002 review cycle. The Committee notes its concern over this change, especially with regard to how it is going to affect students from less privileged backgrounds and mentions its inconsistency with Article 13 (2)(c)'s state obligation to progressively introduce free higher education. It, therefore, “urges” the UK to ensure this change has no negative effect on disadvantaged students.⁷⁴⁰ The Special Rapporteur on Education also highlights tuition fees' negative impact on non-discriminatory access to higher education.⁷⁴¹ Although the issue was not brought up in any of the 2009 shadow reports, the Committee recommends the review of the tuition fees policy and refers to the UK's Article 13 and [General Comment No 13](#) obligations.⁷⁴² Two 2016 [shadow reports](#) place emphasis on the negative

⁷³⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 19, para 31.

⁷³⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 6.

⁷³⁹ EHRC, 'Check on UK Government Progress' (16 September 2021) <https://humanrightstracker.com/en/overarching-progress/> accessed 20 November 2021.

⁷⁴⁰ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 22, 41.

⁷⁴¹ Commission on Human Rights, 'The Right to Education, Report Submitted by Katarina Tomaševski, Special Rapporteur, in Accordance with Commission Resolution 2002/23, Mission to the United Kingdom (Northern Ireland)' (5 February 2003) UN Doc E/CN.4/2003/9/Add.2, para 25.

⁷⁴² CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great

impact of increasing tuition fees on equality in access to education⁷⁴³ which is taken up in the CESCR's 2016 Concluding Observations. It raises concerns about the effect of rising tuition fees on equal access to education. Therefore, the Committee recommends a fee reduction, and that the government works towards the Article 13 goal of the progressive introduction of free tertiary education.⁷⁴⁴

9.2 Developments since 2016

9.9 Recent scholarship and legislative changes in the UK and its devolved nations since 2016 has mainly focused on **non-discrimination** of particular groups of children or young people (CYP) related to their education – i.e. **disabled CYP** (CYP with special educational needs and disabilities SEND), **queer**⁷⁴⁵ **CYP**, **CYP from ethnic or national minorities**, and **Gypsy, Roma and Traveller (GRT) CYP**. Additionally, **school exclusions**, **bullying** and continued **educational segregation in Northern Ireland** have been addressed repeatedly. Except for the last one, all the concerns have also been linked to the **COVID-19 pandemic**, whose general implications for education in the UK will be briefly discussed, along with **non-discrimination** generally. Therefore, if relevant, these two cross-cutting themes will be addressed in each section on the respective issues. A general trend that has been running through most of the scholarship and legislative changes is the increased focus on placing CYP themselves at the heart of the educational system/decisions and on CYP possessing rights of their own⁷⁴⁶ with regard to their education, which is in accordance with Article 28 of the

Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 44.

⁷⁴³ EHRC, 'Socio-Economic Rights in the UK, Updated submission to the UN Committee on Economic, Social and Cultural Rights in Advance of the Public Examination of the UK's Implementation of ICESCR' (April 2016) 89; Human Rights Consortium, 'Submission from the Human Rights Consortium to the United Nations Human Rights Committee on Economic, Social and Cultural Rights (CESCR's) Review of the UK's 6th Periodic Report' (April 2016) 8.

⁷⁴⁴ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 65-66.

⁷⁴⁵ The term queer is used as an umbrella term for any sexual orientation, gender identity, or sex characteristics that does not neatly fit (hetero)normativity.

⁷⁴⁶ House of Commons Education Committee (HCEC), 'Special Educational Needs and Disabilities' (16 October 2019) 3; Sheila Riddell, Neville Harris and Gail Davidge, 'Autonomy, Education and the Rights of Children with Special and Additional Support Needs and Disabilities in England and Scotland: A New Paradigm?' (2021) 43 *Journal of Social Welfare and Family Law* 42, 43.

Convention on the Rights of the Child (CRC).⁷⁴⁷ Again, this will be addressed in the respective sections.

9.10 Generally speaking, there is very limited information on **funding**, which is relevant for providing a general context, and **Brexit** in relation to education in the UK and its devolved nations, which is why both themes will be touched upon only very briefly. With regard to **Brexit**, available scholarship is from 2017, meaning that it only discusses potential future impacts Brexit might have on educational matters in the UK. Concerns include an increase of higher education fees for European Union (EU) students acting as a deterrent to them coming to study in the UK and consequently negatively affecting universities' revenues, the loss of EU research funding, UK students being able to study in other EU countries (as part of the Erasmus programme for example).⁷⁴⁸ Furthermore, Brexit's possible negative consequences have been addressed in relation to Northern Ireland's CYP living in border areas. Under EU law, they profited from the EU's provision on access to education irrelevant of migration status, which allowed them to "attend their closest school, even if it is across the border".⁷⁴⁹ However, the [Human Rights Consortium](#) has pointed out that in 2018 it had still been unclear how the concern of access to education across borders will be addressed in the future.⁷⁵⁰

⁷⁴⁷ CRC, (adopted 20 November 1989, entered into force 02 September 1990) UNTS 1577 3, art 28.

⁷⁴⁸ Derek Birrell and Ann Marie Gray, 'Devolution: The Social, Political and Policy Implications of Brexit for Scotland, Wales and Northern Ireland' (2017) 46 *Journal of Social Policy* 765, 769-770; Ken Mayhew, 'UK Higher Education and Brexit' (2017) 33 *Oxford Review of Economic Policy* S155, S156-S157, S159; Simon Marginson, 'Brexit: Challenges for Universities in Hard Times' [2017] *International Higher Education* 8, 9.

⁷⁴⁹ Human Rights Consortium, 'Rights at Risk: Brexit, Human Rights and Northern Ireland' (January 2018) 70-71.

⁷⁵⁰ *ibid* 70.

9.2.1 Context

The COVID-19 Pandemic and Education in General

Background information on COVID-19 measures affecting education

- 20 March 2020: **closure of schools** in the **UK** (except for vulnerable Children and Young People (CYP) and CYP of key workers); announcement of the **cancellation of all secondary school examinations in 2020**
- 25 March 2020: **Coronavirus Act 2020** – allowed for the closure of educational institutions
- As of June 2020 until September 2020: **gradual re-opening of schools in England** → however, most of schools only re-opened for face to face classes in September 2020
- 29 June 2020: **re-opening of Welsh schools**
- August 2020: **re-opening of Scottish schools**
- September 2020: **re-opening of Northern Ireland's schools**
- November 2020: **cancellation of A-levels and GCSEs for 2021 in Wales**
- December 2020: **cancellation of any face-to face-teaching** in the **UK** → in **Northern Ireland special schools** were kept open; **cancellation of higher exams for 2021 in Scotland**
- January 2021: **cancellation of A-levels and GCSEs for 2021 in England and Northern Ireland**
- 22 February 2021: **re-opening of primary schools** for young children in **Wales and Scotland**
- 08 March 2021: full **re-opening of primary schools in England**; staggering **re-opening of secondary schools in England**; **re-opening of primary schools for youngest children in Northern Ireland**
- 15 March 2021: **re-opening of all primary and secondary schools in Scotland and Wales**
- 22 March 2021: **re-opening of the remaining schools in Northern Ireland**
- Varying approaches of **universities**

751

⁷⁵¹ Coronavirus Act 2020; 'Coronavirus: UK Schools, Colleges and Nurseries to Close from Friday' *BBC News* (18 March 2020) <https://www.bbc.com/news/uk-51952314> accessed 10 December 2021; 'Coronavirus: Schools in Wales to Reopen on 29 June' *BBC News* (3 June 2020) <https://www.bbc.com/news/uk-wales-52895374> accessed 10 December 2021; 'Coronavirus: Scottish Schools Aim to Reopen Full-Time in August' *BBC News* (23 June 2020) <https://www.bbc.com/news/uk-scotland-scotland-politics-53139895> accessed 10 December 2021; 'Coronavirus: Return to Schools "Good Day for Young People"' *BBC News* (1 September 2020)

9.11 All of the scholarship on the impact of the COVID-19 pandemic, and the related lockdowns, on the UK's provision of education concludes that the pandemic has significantly contributed to the disruption of education and, therefore, the exacerbation of existing educational inequalities.⁷⁵² More concretely, Lucinda Ferguson asserts that the English government has failed to protect equal access to education for particularly vulnerable CYP,⁷⁵³ and the IFS points towards the pandemic's significant negative impact on the educational

<https://www.bbc.com/news/uk-northern-ireland-53978999> accessed 10 December 2021; Hannah Richardson, 'Millions of Pupils Return after Historic Shutdown' *BBC News* (2 September 2020) <https://www.bbc.com/news/education-53986549> accessed 10 December 2021; 'Covid: What Does Wales Scrapping 2021 Exams Mean?' *BBC News* (11 November 2020) <https://www.bbc.com/news/uk-wales-54901810> accessed 10 December 2021; Scottish Government, 'Schools Guidance' (21 December 2020) <https://web.archive.org/web/20210105012057/https://www.gov.scot/news/schools-guidance/> accessed 10 December 2021; Mark Bain, 'Union Demands Answers over Reopening of Nursery and Special Schools' *Belfast Telegraph* (4 January 2021) <https://www.belfasttelegraph.co.uk/news/health/coronavirus/union-demands-answers-over-reopening-of-nursery-and-special-schools-39930091.html> accessed 10 December 2021; 'Teachers' Grades to Replace A-Levels and GCSEs in England' *BBC News* (6 January 2021) <https://www.bbc.com/news/education-55561838> accessed 10 December 2021; 'Northern Ireland Cancels GCSE and A-Level Exams' *BBC News* (6 January 2021) <https://www.bbc.com/news/uk-northern-ireland-55560314> accessed 10 December 2021; 'Covid in Scotland: Youngest Pupils to Return to Classrooms' *BBC News* (16 February 2021) <https://www.bbc.com/news/uk-scotland-56087581> accessed 10 December 2021; 'Lockdown: Secondary School Pupils Could Go Back after Easter' *BBC News* (22 February 2021) <https://www.bbc.com/news/uk-wales-56131719> accessed 10 December 2021; Sean Coughlan, 'First Day Back at School Has "Gone Well", Say Heads' *BBC News* (8 March 2021) <https://www.bbc.com/news/education-56293639> accessed 10 December 2021; Meredith Robbie, 'Coronavirus: Weir Wants P1-P3 Children to Stay in Class' *BBC News* (8 March 2021) <https://www.bbc.com/news/uk-northern-ireland-56315949> accessed 10 December 2021; 'Covid: Wales' School Pupils "excited and Nervous" about Return' *BBC News* (15 March 2021) <https://www.bbc.com/news/uk-wales-56387862> accessed 10 December 2021; Jenna Macfarlane, 'When Do Schools Go Back in Scotland? Date Secondary Pupils Return - and Covid Testing Plan Explained' *The Scotsman* (17 March 2021) <https://www.scotsman.com/education/when-do-schools-go-back-in-scotland-date-secondary-pupils-return-and-covid-testing-plan-explained-3105799> accessed 10 December 2021; Jayne McCormack, 'Covid-19: No Return to Home-Schooling for Youngest Pupils' *BBC News* (11 March 2021) <https://www.bbc.com/news/uk-northern-ireland-56353463> accessed 10 December 2021; Hannah Richardson, 'Coronavirus: Teachers to Estimate Grades after Exams Cancelled' *BBC News* (20 March 2020) <https://www.bbc.com/news/education-51980831> accessed 10 December 2021.

⁷⁵² EHRC, 'Evidence to the Education Select Committee Inquiry on the Impact of COVID-19 on Education and Children's Services' (29 May 2020) para 3; Jack Britton et al, '2020 Annual Report on Education Spending in England' (*The Institute of Fiscal Studies*, November 2020) 6; Alison Andrew et al, 'Learning during the Lockdown: Real-Time Data on Children's Experiences during Home Learning' (*The Institute of Fiscal Studies*, 2020) 4; Sandra Fredman, 'A Human Rights Approach: The Right to Education in the Time of Covid-19' [2021] CHILD DEVELOPMENT e900, e900.

⁷⁵³ Lucinda Ferguson, 'Vulnerable Children's Right to Education, School Exclusion, and Pandemic Law-Making' (2021) 26 *Emotional & Behavioural Difficulties* 101, 102.

attainment gap.⁷⁵⁴ The EHRC also raised its concern about “the lack of a consistent approach to student assessments” in higher education in relation to students’ access to and affordability of technology needed for online examinations - the Commission estimates that one million students lack adequate access to laptops or computer.⁷⁵⁵

9.12 Given the literature’s overwhelming focus on the varying degrees of impact of the pandemic on different groups of CYP and having in mind Sandra Fredman’s assertion that States are also bound by non-discrimination provisions during a pandemic and are, therefore, “required to redress the structural deficits in education which made it inevitable that a pandemic would exacerbate inequalities”,⁷⁵⁶ more detailed COVID-19-relating concerns will be raised in the section on [non-discrimination and equality in 9.2.2](#).

Education Funding

Important Changes in Funding

- **£14 billion** investment in **primary** and **secondary education** between 2019 and 20122/23 in **England**
 - 2020/21: **£2.6 billion**
 - 2021/22: **£4.6 billion**
 - 2022/23: **£7.1 billion**
- Includes **£780 million** extra for CYP with **SEND** in 2020/21

757

⁷⁵⁴ Alison Andrew et al, ‘Learning during the Lockdown: Real-Time Data on Children’s Experiences during Home Learning’ (*The Institute of Fiscal Studies*, 2020) 4.

⁷⁵⁵ EHRC, ‘Evidence to the Education Select Committee Inquiry on the Impact of COVID-19 on Education and Children’s Services’ (29 May 2020), para 25.

⁷⁵⁶ Sandra Fredman, ‘A Human Rights Approach: The Right to Education in the Time of Covid-19’ [2021] CHILD DEVELOPMENT e900, e902.

⁷⁵⁷ UK Government, ‘Prime Minister Boosts Schools with £14 Billion Package’ (30 August 2019) <https://www.gov.uk/government/news/prime-minister-boosts-schools-with-14-billion-package> accessed 09 December 2021.

9.13 Similar to Brexit, there is limited scholarship available on issues related to educational funding in the UK. However, tracking the UK government's spending records for education is relevant insofar as it speaks to the UK's ability to progressively realise its obligations under Article 13 of [ICESCR](#).

9.14 In fact, the only information available is on the UK government's plan to increase investment in education (see information box above). However, The [Institute for Fiscal Studies](#) (IFS) points out that although there has been a significant **rise in real terms total spending on education** in the UK **since the 1990s**, this is not true for **education spending in relation to national income** (which has **stalled since the early 1970s**).⁷⁵⁸ Accordingly, the IFS predicts that the ratio of education spending to national income will decrease further for 2020/21 due to a reduction in the number of pupils during the COVID-19 pandemic-related lockdown.⁷⁵⁹ At the same time, it notes that the extra **£7.1 billion allocated for 2022/23 will be nearly enough to offset the funding cuts** related to austerity measures in the 2010s.⁷⁶⁰

9.15 In line with the UK government's policy priorities, the **government has committed to narrowing the achievement gap** in England by allocating more funds to so-called "deprived schools".⁷⁶¹ Yet, in practice, the IFS notes a decrease of the deprivation funding premium in 2018/19 and a 13% decrease in spending per pupil in such schools,⁷⁶² which could potentially have an important impact on achieving equality within the right to education.

9.16 To **mitigate the consequences of the COVID-19 pandemic**, the UK government has decided to introduce to help schools in England with an extra £80 per pupil between the ages of 5 and 16, and a National Tutoring Programme.⁷⁶³ The IFS nonetheless highlights that these "plans are moderate compared with evidence on the likely reductions in skills", which renders it more difficult to address the pandemic-related increase in inequalities.⁷⁶⁴ This is especially true when considering that schools in disadvantaged areas have been facing larger decreases in

⁷⁵⁸ Jack Britton et al, '2020 Annual Report on Education Spending in England' (*The Institute of Fiscal Studies*, November 2020) 14-15.

⁷⁵⁹ *ibid* 15.

⁷⁶⁰ *ibid* 8.

⁷⁶¹ *ibid* 9.

⁷⁶² *ibid*.

⁷⁶³ *ibid*.

⁷⁶⁴ *ibid* 90.

spending per pupil in the last ten years and are going to receive the smallest budgetary increase over the next years.⁷⁶⁵

9.17 With regard to **higher education**, the IFS expects spending to be higher due to the COVID-19 pandemic and the increase in UK students, “lower expected earnings and employment prospects for the 2020 cohort after they graduate”.⁷⁶⁶ It furthermore mentions the pension deficits’ and decreased accommodation income’s negative effects.⁷⁶⁷

9.18 In sum, the funding context in UK education is ambiguous. While general spending on education in the UK is expected only to be slightly lower than before the introduction of austerity measures in 2010,⁷⁶⁸ there is a need for concern with regard to the reduction in funding of “deprived schools” and its consequences on inequalities in education, to the relation between increased inequalities due to the COVID-19 pandemic and government spending on each pupil, and to the significant losses higher educational institutions have faced.

9.2.2 Non-Discrimination and Equality

9.19 Without a doubt, the **most prominent concern in scholarship** on the right to education since 2016 is non-discrimination in relation to various groups of children and young people (CYP), reflecting the CESCR’s focus on equality in educational access and attainment.

9.20 In **England**, the [Education Policy Institute](#) highlights the persisting challenges of lower educational performances across all phases of education of pupils experiencing poverty, CYP with special educational needs and disabilities (SEND), and CYP from ethnic minorities,⁷⁶⁹ although the overall educational attainment had been sustained since 2019.⁷⁷⁰ Additionally, it emphasises the “profound impact” the COVID-19 pandemic has had on English education; however it also notes that the disadvantaged learning gaps had been widening even before the

⁷⁶⁵ *ibid.*

⁷⁶⁶ *ibid* 12.

⁷⁶⁷ *ibid.*

⁷⁶⁸ *ibid* 89.

⁷⁶⁹ Jo Hutchinson, Mary Reader and Avinash Akhal, ‘Education in England: Annual Report 2020’ (*Education Policy Institute*, August 2020) 7.

⁷⁷⁰ *ibid* 32.

pandemic.⁷⁷¹ In fact, after the disadvantage gap had stopped closing in the past five years, it has begun to widen this year,⁷⁷² being most severe for looked after CYP,⁷⁷³ most inequalitarian for Music and Physical Education and relatively important for the GCSE compulsory subjects English and Mathematics.⁷⁷⁴

⁷⁷¹ *ibid.*

⁷⁷² *ibid* 9, 11.

⁷⁷³ *ibid* 25.

⁷⁷⁴ *ibid* 13-14.

Children and Young People with Special Educational Needs and Disabilities

Legislative reforms related to the education of CYP with SEND

- **Children and Families (England) Act 2014**
 - Replacement of “statements of need” with Education, Health and Care Plans (EHCPs) → coordinated assessment process
 - Ensure that education, health and social care professionals work together effectively
 - Right of CYP to be involved autonomously in the dispute resolution processes: Introduction of mediation before bringing an appeal in relation to a SEND decision
 - Right to have a CYP’s views heard in processes affecting their education
 - Introduction of supported internships
- **Education (Scotland) Act 2016**
 - New rights for CYP between 12 and 15 years
 - Introduction of the term Additional Support Needs (ASN)
 - Right to have a CYP’s views heard in processes affecting them
 - Right of CYP to be involved in the dispute resolution processes
- **Special Educational Needs and Disability (Northern Ireland) Act 2016**
 - Early identification, assessment and provision for CYP with SEND
 - Right of CYP to be involved in the dispute resolution processes: Introduction of mediation before bringing an appeal in relation to a SEND decision
 - Emphasis to place the CYP at heart of decision-making processes of their SEND provisions
 - The Education Authority is obliged to prepare and publish a plan regarding the SEND
- **Additional Learning Needs and Educational Tribunal (Wales) Act 2018**
 - ‘Additional Learning Needs’ replace the term ‘SEND’
 - One single system across the different educational levels
 - Close collaboration between the NHS and the local governments
 - More transparency in the dispute resolution system

⁷⁷⁵ Orla Drummond, ‘Potential Barriers to the New Child’s Right to Appeal to Special Educational Needs and Disability Tribunals in Northern Ireland’ (2016) 67 Northern Ireland Legal Quarterly 473, 474; Dalene Swanson,

9.21 Despite the introduction of several legislative reforms since 2014, **concerns over children and young people (CYP) with special educational needs and disabilities (SEND)** are most often referred to **within the broader framework of non-discrimination**, reflecting both an international trend of an increased focus on disabled children’s participative rights and the [EHRC’s human rights tracker](#) identification of “sustained or severe regression” in the enjoyment of the right to inclusive education (for more detailed information see paragraph 9.26) in the UK.⁷⁷⁶

9.22 In 2014, England enacted **legislation** intended to **improve the educational rights of CYP with SEND** - Scotland and Northern Ireland followed in 2016, and Wales in 2018, although its implementation only started in September 2021⁷⁷⁷ (see information box at the beginning of the section).⁷⁷⁸ However, Sheila Riddell, Neville Harris and Gail Davidge point out that coordinated support plans in **Scotland** (the Scottish equivalent to the English ECHP) have become “only accessible for the most determined and best informed parents”.⁷⁷⁹ It will be interesting to see whether Scotland’s incorporation of the UN Convention on the Rights of the Child into its domestic law⁷⁸⁰ will make a difference once it is in force. Additionally, Dalene

Hong-Lin Yu and Stella Mouroutsou, ‘Inclusion as Ethics, Equity and/or Human Rights? Spotighting School Mathematics Practices in Scotland and Globally’ (2017) 5 Social Inclusion 172, 175; HCEC, ‘Special Educational Needs and Disabilities’ (16 October 2019) 6; Sheila Riddell, Neville Harris and Gail Davidge, ‘Autonomy, Education and the Rights of Children with Special and Additional Support Needs and Disabilities in England and Scotland: A New Paradigm?’ (2021) 43 Journal of Social Welfare and Family Law 42, 45; ‘Implementing Major Education Reforms’ (*Ymchwil y Senedd Senedd Research*, 25 May 2021) <https://research.senedd.wales/research-articles/implementing-major-education-reforms/> accessed 14 December 2021.

⁷⁷⁶ EHRC, ‘Inclusive Education: UK Government Assessment’ (30 September 2021) <https://humanrightstracker.com/en/progress-assessment/inclusive-education-uk-government-assessment/> accessed 13 December 2021.

⁷⁷⁷ ‘Implementing Major Education Reforms’ (*Ymchwil y Senedd Senedd Research*, 25 May 2021) <https://research.senedd.wales/research-articles/implementing-major-education-reforms/> accessed 14 December 2021.

⁷⁷⁸ Orla Drummond, ‘Potential Barriers to the New Child’s Right to Appeal to Special Educational Needs and Disability Tribunals in Northern Ireland’ (2016) 67 Northern Ireland Legal Quarterly 473, 473; Sheila Riddell, Neville Harris and Gail Davidge, ‘Autonomy, Education and the Rights of Children with Special and Additional Support Needs and Disabilities in England and Scotland: A New Paradigm?’ (2021) 43 Journal of Social Welfare and Family Law 42, 42.

⁷⁷⁹ Sheila Riddell, Neville Harris and Gail Davidge, ‘Autonomy, Education and the Rights of Children with Special and Additional Support Needs and Disabilities in England and Scotland: A New Paradigm?’ (2021) 43 Journal of Social Welfare and Family Law 42, 56.

⁷⁸⁰ ‘New Human Rights Bill’ (*Scottish Government*, 12 March 2021) <http://www.gov.scot/news/new-human-rights-bill/> accessed 13 January 2022.

M. Swanson, Hong-Lin Yu and Stella Mouroutsou note that the Education Act (Scotland) 2016 reinstalls “exclusionary and inequality effects [...] by creating the conditions for some pupils constructed in terms of disabilities or ‘low ability’, to be afforded a more inferior education[...].”⁷⁸¹

9.23 In contrast, in the **English system**, reforms have resulted in the increased involvement of CYP with SEND in planning processes and dispute resolution.⁷⁸² Yet, the [House of Commons Education Committee](#) (HCEC) concludes that the **English** reforms have led to unlawful practices at times, “bureaucratic nightmares, buck-passing and a lack of accountability, strained resources and adversarial experiences”.⁷⁸³ This seems to be largely due to a significant **lack of funding** – the £700 million for CYP with SEND is not enough to compensate for the existing budgetary challenges⁷⁸⁴ - and **poor administration**.⁷⁸⁵ The HCEC further asserts the need for a more coherent system of overseeing the implementation of the legislative reforms and a general culture change – viewing the support for SEND as a system-wide issue - in school, local authorities and government frameworks in order to improve CYP with SEND’s educational experiences.⁷⁸⁶ Furthermore, the [Office for Standards in Education](#) (Ofsted) notes that the 2014 legislative reforms in England have been accompanied by a Code of Practice attributing the responsibility of identifying and meeting the needs of CYP with SEND to the local area.⁷⁸⁷ However, it concludes that CYP with SEND still have an inferior educational experience compared to their non-SEND peers, that CYP with SEND are more excluded (unofficially), absent or missing from school, that there is a lack of coordination of SEND services, that the older the CYP get, the less likely it becomes that their SEND is identified, that there is a lack of CYP’s involvement in their SEND provision process, and that

⁷⁸¹ Dalene Swanson, Hong-Lin Yu and Stella Mouroutsou, ‘Inclusion as Ethics, Equity and/or Human Rights? Spotlighting School Mathematics Practices in Scotland and Globally’ (2017) 5 Social Inclusion 172, 173.

⁷⁸² *ibid* 44-45.

⁷⁸³ HCEC, ‘Special Educational Needs and Disabilities’ (16 October 2019) 3.

⁷⁸⁴ *ibid* 8.

⁷⁸⁵ *ibid* 3, 8; Sheila Riddell, Neville Harris and Gail Davidge, ‘Autonomy, Education and the Rights of Children with Special and Additional Support Needs and Disabilities in England and Scotland: A New Paradigm?’ (2021) 43 Journal of Social Welfare and Family Law 42, 44-45.

⁷⁸⁶ HCEC, ‘Special Educational Needs and Disabilities’ (16 October 2019) 3.

⁷⁸⁷ Office for Standards in Education (Ofsted), ‘Local Area SEND Inspections: One Year On’ (October 2017) para 2.

the employment and training participation of CYP with SEND who are out of education is low.⁷⁸⁸

9.24 What all of the legislative reforms in the **three devolved nations** have in common is the idea of the **increased participation of CYP in processes of appeal** in relation to their special educational provisions, which is in line with the Committee on the Rights of Persons with Disabilities' [General Comment No 4](#).⁷⁸⁹ However, there is critical scholarship on the reforms' implementation in both in England and Northern Ireland.⁷⁹⁰ Orla Drummond identifies various attitudinal and procedural barriers – including the lack of access to the appeal tribunals for people experiencing poverty, the fairness of mediation, the balance of power between parents and the Education Authority, parents' lack of knowledge of the legal system, the overly legalistic and complex nature of the process, parents' hesitation to involve their children with SEND in the appeal process, the Education Authority's decision power over determining CYP's capacity to participate autonomously in the appeal process, lack of specialist legal education in relation to CYP with SEND, and the discriminatory attitudes of judicial staff – to CYP with SEND's participation in their appeal processes in **Northern Ireland**.⁷⁹¹ On the other hand, Mairi Ann Cullen and Stephen Cullen point towards the lack of professional standards and training for mediators in SEND appeal processes, the lack of the autonomous inclusion of CYP's views during the process, and local authorities' refusal to attend mediation in **England**.⁷⁹²

⁷⁸⁸ *ibid* 5-7.

⁷⁸⁹ Committee on the Rights of Persons with Disabilities, 'General Comment No 4 (2016) (02 September 2016) UN Doc CRPD/C/GC/4, para 45.

⁷⁹⁰ Orla Drummond, 'Potential Barriers to the New Child's Right to Appeal to Special Educational Needs and Disability Tribunals in Northern Ireland' (2016) 67 Northern Ireland Legal Quarterly 473; Mairi Ann Cullen and Stephen Cullen, 'Young People's Right to Appeal to the English First-Tier Tribunal (Special Educational Needs and Disability): Learning from the First Two Years' (2021) 43 Journal of Social Welfare & Family Law 60.

⁷⁹¹ Orla Drummond, 'Potential Barriers to the New Child's Right to Appeal to Special Educational Needs and Disability Tribunals in Northern Ireland' (2016) 67 Northern Ireland Legal Quarterly 473, 473.

⁷⁹² Mairi Ann Cullen and Stephen Cullen, 'Young People's Right to Appeal to the English First-Tier Tribunal (Special Educational Needs and Disability): Learning from the First Two Years' (2021) 43 Journal of Social Welfare & Family Law 60, 75.

9.25 The [EHRC](#) mainly addresses the fact that **CYP with SEND are increasingly educated in non-mainstream schools** (special schools) contrary to the [Convention on the Rights of Persons with Disabilities](#)’ (CRPD) framework of inclusive education,⁷⁹³ and refers to the **negative impact the pandemic** has had on the access to education for CYP with SEND.⁷⁹⁴ With regard to the latter, the [Disabled Children’s Partnership](#) has found that one-third of parents of CYP with SEND have not received any additional help with homeschooling during the lockdown, and that the assessment processes for extra help provision for their children have either been delayed or entirely suspended.⁷⁹⁵ The EHRC also noted its concern over the UK’s governments new regulations, including the temporary modification of local authorities’ legal obligations requiring them to only “make reasonable endeavours to discharge their duty” and relaxing the timescales for conducting ECHP⁷⁹⁶ assessments for CYP with potential SEND.⁷⁹⁷ It emphasised that reduced support for CYP with SEND might increase attainment gaps⁷⁹⁸ and therefore calls for the government to ensure that EHCP-related decisions comply with the UK’s equality and human rights obligations.⁷⁹⁹

9.26 Concerning the EHRC’s second concern about the **lacking provision of inclusive education** for CYP with SEND – involving a cultural, policy-related and practical transformation in educational environments which ensures the “full and effective participation, accessibility, attendance and achievement of all students”⁸⁰⁰ - Gauthier de Beco notes the

⁷⁹³ Convention on the Rights of Persons with Disabilities (CRPD) (adopted 30 March 2007, entered into force 03 May 2008) UNTS 1465 85, art 24. The paradigm of inclusive education recognises the importance to educate CYP with SEND together with non-disabled children. Gauthier de Beco, ‘The Right to Inclusive Education: Why Is There so Much Opposition to Its Implementation?’ (2017) 14 International Journal of Law in Context 396, 396.

⁷⁹⁴ EHRC, ‘Inclusive Education: UK Government Assessment’ (30 September 2021) <https://humanrightstracker.com/en/progress-assessment/inclusive-education-uk-government-assessment/> accessed 13 December 2021.

⁷⁹⁵ Disabled Children’s Partnership, ‘#LeftInLockdown - Parent Carers’ Experiences of Lockdown’ (2020) 4, 6, 13.

⁷⁹⁶ An ECHP identifies CYP’s educational, health and social needs, and establishes the additional support needed. It is for CYP aged up to 25 years “who need more support than is available through special educational needs support” and is mandated by the local authority. Jo Hutchinson, Mary Reader and Avinash Akhal, ‘Education in England: Annual Report 2020’ (*Education Policy Institute*, August 2020) 21; UK Government, ‘Children with special educational needs and disabilities (SEND)’ <https://www.gov.uk/children-with-special-educational-needs/extra-SEN-help> accessed 13 December 2021.

⁷⁹⁷ EHRC, ‘Evidence to the Education Select Committee Inquiry on the Impact of COVID-19 on Education and Children’s Services’ (29 May 2020), para 34.

⁷⁹⁸ *ibid*, para 35.

⁷⁹⁹ *ibid*, para 36.

⁸⁰⁰ Committee on the Rights of Persons with Disabilities, ‘General Comment No 4 (2016) (02 September 2016) UN Doc CRPD/C/GC/4, para 9.

continued enrolment of CYP with SEND in special schools in England and Wales.⁸⁰¹ According to their findings, inclusive education consists of regular schools embracing pupils' diversity and does therefore not mean "identifying the 'problems' of disabled children so as to help them to close the 'gap'"⁸⁰² but making all educational programmes available to CYP with SEND.⁸⁰³ CYP with SEND's right to non-discrimination, therefore, encompasses their "right not be segregated and to be provided with reasonable accommodation", which should be understood in the broader context of the right to equal access to education.⁸⁰⁴ In this regard, Dalene M. Swanson, Hong-Lin Yu and Stella Mouroutsou identified Mathematics education as particularly notorious since it is based upon "assumptions about 'ability'".⁸⁰⁵ The perceived apolitical, dispassionate and objective nature of Mathematics obscures⁸⁰⁶ the fact that pupils identified as being low ability, slow or disabled learners frequently receive an inferior mathematics education than their peers and ultimately leads to segregation in different classrooms according to different (dis)ability groups.⁸⁰⁷ The authors identify Scottish primary schools as being particularly susceptible to (dis)ability grouping,⁸⁰⁸ and consequently, they (re)produce social constructions based on (dis)ability which only afford equal access to education for the 'abled' CYP.⁸⁰⁹

9.27 The [Positive & Active Behaviour Support Scotland and Challenging Behaviour Foundation](#) raises its concern about **harmful restrictive interventions**⁸¹⁰ involving CYP with SEND in the UK. They particularly refer to the facts that 88% of their survey respondents reported that their disabled child had been subject to physical restraint, that 71 % answered their child had experienced seclusion, and that 50% said their child had been medicated to manage

⁸⁰¹ Gauthier de Beco, 'The Right to Inclusive Education: Why Is There so Much Opposition to Its Implementation?' (2017) 14 International Journal of Law in Context 396, 402.

⁸⁰² *ibid* 403.

⁸⁰³ *ibid*.

⁸⁰⁴ Committee on the Rights of Persons with Disabilities, 'General Comment No 4 (2016) (02 September 2016) UN Doc CRPD/C/GC/4, para 13.

⁸⁰⁵ Dalene Swanson, Hong-Lin Yu and Stella Mouroutsou, 'Inclusion as Ethics, Equity and/or Human Rights? Spotlighting School Mathematics Practices in Scotland and Globally' (2017) 5 Social Inclusion 172, 172.

⁸⁰⁶ *ibid* 174.

⁸⁰⁷ *ibid* 176-177.

⁸⁰⁸ *ibid* 178.

⁸⁰⁹ *ibid* 179.

⁸¹⁰ Restrictive intervention includes physical restraint, seclusion, mechanical restraint, blanket restrictions and chemical restraint. – Positive & Active Behaviour Support Scotland and Challenging Behaviour Foundation, 'Reducing Restrictive Intervention of Children and Young People' (January 2019) 9.

their behaviour.⁸¹¹ The survey's findings "raise major concerns about the use of restrictive intervention with disabled children in the UK and cast doubt on the assumption that it is being used only as a last resort";⁸¹² on the contrary, they seem to be the pre-eminently used to address CYP's "challenging behaviour".⁸¹³ The two organisations affirm that restrictive interventions are employed too readily and that their frequency indicates a lack of focus on the rights of children.⁸¹⁴ Both organisations ask the UK government to start comprehending the nature and scale of restrictive intervention; they recommend training for teachers and staff in schools in order to learn how to engage with various forms of disability, they call for the provisions of trauma support for the harmed CYP and their families, and they ask for more accountability and stronger safeguarding measures.⁸¹⁵

9.28 In relation to **educational attainment** in England, the [Education Policy Institute](#) identifies only slow progress in the reduction of the attainment gap for CYP with SEND – a gap that increases as CYP grow older⁸¹⁶ - especially since the legislative reforms in 2014.⁸¹⁷

Queer⁸¹⁸ Children and Young People

9.29 Although the CESCRR had never referred to **queer children and young people (CYP)** as a particularly disadvantaged group in relation to education in its Concluding Observations on the UK, concerns about their **susceptibility to discrimination, bullying and harassment in educational institutions** have been repeatedly raised in the past few years.⁸¹⁹ The [National](#)

⁸¹¹ Positive & Active Behaviour Support Scotland and Challenging Behaviour Foundation, 'Reducing Restrictive Intervention of Children and Young People' (January 2019) 3.

⁸¹² *ibid* 4.

⁸¹³ *ibid*.

⁸¹⁴ *ibid*.

⁸¹⁵ *ibid*.

⁸¹⁶ Jo Hutchinson, Mary Reader & Avinash Akhal, 'Education in England: Annual Report 2020' (Education Policy Institute, August 2020) 21.

⁸¹⁷ *ibid*.

⁸¹⁸ The term queer is used as an umbrella term for any sexual orientation, gender identity, or sex characteristics that does not neatly fit (hetero)normativity.

⁸¹⁹ Nathan Hudson-Sharp and Hilary Metcalf, 'Inequality among Lesbian, Gay, Bisexual and Transgender Groups in the UK: A Review of Evidence' (*National Institute of Economic and Social Research*, July 2016); Josh Bradlow et al, 'School Report: The Experiences of Lesbian, Gay, Bi and Trans Young People in Britain's Schools in 2017' (*Stonewall*, 2017); Government Equalities Office, 'National LGBT Survey' (July 2018); Nomisha Kurian, 'Rights-Protectors or Rights-Violators? Deconstructing Teacher Discrimination against LGBT Students in England and the UN Convention on the Rights of the Child as an Advocacy Tool' (2020) 24 *The International Journal of Human Rights* 1080.

[Institute of Economic and Social Research](#) (NIESR) published a report in 2016 identifying persisting inequalities in education for lesbian, gay, bisexual and transgender (LGBT) CYP compared to their heterosexual peers in the UK.⁸²⁰ It also notes that studies on LGBT's educational discrimination had been “non-robust and with little comparison between groups”.⁸²¹ However, it does note that **homophobic, biphobic, and transphobic (HBT) bullying** is a **major problem** in schools, colleges and universities – although it is more pronounced for transgender people at university level. Additionally, the NIESR finds a decrease in bullying based on sexual orientation over time. It suggests that the alienation of LGB CYP, the failure to counter homophobia and biphobia, and the failure to address LGB's support needs are due to the **persistence of both heterosexism and heteronormativity**⁸²² in education. Therefore, the NIESR firstly recommends effectively implementing practices of equal opportunities and the training of and leadership support for teachers.⁸²³

9.30 The NIESR's conclusions are largely supported by [Stonewall](#)'s findings in 2017. According to this report, which studied the experiences of lesbian, gay, bisexual, transgender and intersex (LGBTI) CYP in **Scottish, English and Welsh secondary schools and colleges**, almost half of the LGB CYP experience **bullying** at school, while 64% of the transgender CYP do so.⁸²⁴ About 50% of LGBT CYP are exposed to **HBT language** “frequently or often”.⁸²⁵ Stonewall finds that in the **majority of cases, teachers do not intervene** when LGBT CYP are bullied, and school staff does **not challenge HBT language** (71%, 68%, respectively).⁸²⁶ Additionally, two-thirds of LGBTI CYP have **never been taught about bisexuality or gender identity at school**, and 40% have not had any sex education regarding safe sex in same-sex relationships.⁸²⁷ The negative effects of LGBT's educational experiences translate into **school skipping** (40% of those who have been bullied for being LGBT), **self-harming** (84% of transgender CYP; 61% for LGB CYP), and **attempting to take their lives** (45% of transgender

⁸²⁰ Nathan Hudson-Sharp and Hilary Metcalf, 'Inequality among Lesbian, Gay, Bisexual and Transgender Groups in the UK: a Review of Evidence' (*National Institute of Economic and Social Research*, July 2016) 11.

⁸²¹ *ibid.*

⁸²² According to the NIESR, heterosexism and heteronormativity refer to the “assumption of heterosexuality in the treatment of people and the provision of services”. *ibid.* vi.

⁸²³ *ibid.* ii, 11.

⁸²⁴ Josh Bradlow et al, 'School Report: The Experiences of Lesbian, Gay, Bi and Trans Young People in Britain's Schools in 2017' (*Stonewall*, 2017) 6.

⁸²⁵ *ibid.*

⁸²⁶ *ibid.*

⁸²⁷ *ibid.*

CYP).⁸²⁸ However, Stonewall concludes on a rather **positive** note by noting that LGB CYP have been less likely to be exposed to homo- or biphobic bullying, that there is a decrease in the presence of homophobic language in education, and that LGBT CYP are increasingly taught about LGBT issues in their education compared to 2007.⁸²⁹

9.31 One year later, in 2018, the UK's Government Equalities Office (GEO) conducted a survey on the experiences of persons from any minority sexual orientation, gender identity or sex characteristics (they will be referred to as "queer CYP" in the remainder of this section) in relation to the UK's public services – including education. The [GEO](#)'s findings portray a grimmer picture: it finds that only **3%** of the responding queer CYP **had talked about sexual orientation and gender identity in school**, and that **LGB CYP are "twice as likely to be bullied in secondary school"**⁸³⁰ than their heterosexual peers.⁸³¹ The vast majority (83%) of the "most serious" incidents in education were not reported.⁸³² However, the prevalence of bullying declined the older the CYP got.⁸³³

9.32 The most recent scholarship on queer CYP's educational experiences dates from 2020 and highlights **teachers' involvement in the perpetuation and enabling of discrimination** against LGBT CYP in **England**.⁸³⁴ This finding is particularly relevant when considering that most English policies construct teachers as the protectors of LGBT CYP and frame LGBT CYP's "rights-violations as peer-to-peer bullying".⁸³⁵

Racism in English, Scottish and Welsh Higher Education Institutions

9.33 Relating to some of the CESCR's earlier Concluding Observations on the UK concerning racial inequality (see paragraph 4.4), the issue of racism in the English, Scottish and Welsh higher education system was raised by the [EHRC](#). In 2019 it conducted a study on racism in publicly funded universities and found that "**racial harassment is a common experience**

⁸²⁸ *ibid.*

⁸²⁹ *ibid* 8.

⁸³⁰ Government Equalities Office, 'National LGBT Survey' (July 2018) 16.

⁸³¹ *ibid* 15-16.

⁸³² *ibid* 16.

⁸³³ *ibid.*

⁸³⁴ Nomisha Kurian, 'Rights-Protectors or Rights-Violators? Deconstructing Teacher Discrimination against LGBT Students in England and the UN Convention on the Rights of the Child as an Advocacy Tool' (2020) 24 *The International Journal of Human Rights* 1080, 1080.

⁸³⁵ *ibid* 1080, 1082.

for a wide range of students and staff at universities across **England, Scotland and Wales**".⁸³⁶ To be more precise, 24% of students from a minority ethnic background reported to have experienced racial harassment during their studies.⁸³⁷ People affected by racism most often reported microaggressions, being ignored or excluded based on their race, being exposed to racist material, or being physically attacked with the harasser being either a student or an academic.⁸³⁸ The EHRC highlights that such incidents were often part of a harassment pattern. In order to keep themselves out of such situations, **students and staff disengaged from university activities**, and 5% of affected students had **left their studies** as a consequence of racial harassment.⁸³⁹ The EHRC criticises university staff for their lack of understanding of race and how this has resulted in "**poorly handled complaints** and in some cases, complaints being dismissed altogether".⁸⁴⁰ Furthermore, a majority of students who had experienced racial harassment did not report the incidents to their university, pointing towards **widespread underreporting**, which can, in turn, lead to universities' inadequate handling of racial harassment.⁸⁴¹ This is supported by students' and staff's perception that their universities prioritise their reputation over the welfare of them.⁸⁴² The EHRC's recommendations thus mainly involve increased protections, transparency and scrutiny, the provision of effective redress, and a general change in university culture.⁸⁴³

Gypsy, Roma and Traveller Children and Young People

9.34 In accordance with the CESCR's past Concluding Observations concerning discrimination in educational attainment and access to education, **Gypsy, Roma and Traveller (GRT) children and young people (CYP)** have again been identified as being **disproportionately affected by discrimination in the UK's education system**.⁸⁴⁴ According to the [Traveller Movement](#)'s 2017 study, 70% of GRT CYP had experienced discrimination in

⁸³⁶ EHRC, 'Tackling Racial Harassment: Universities Challenged' (23 October 2019) 6 (emphasis added).

⁸³⁷ *ibid.*

⁸³⁸ *ibid.*

⁸³⁹ *ibid.* 7.

⁸⁴⁰ *ibid.* 8.

⁸⁴¹ *ibid.* 9-10.

⁸⁴² *ibid.* 12.

⁸⁴³ *ibid.* 13.

⁸⁴⁴ The Traveller Movement, 'The Last Acceptable Form of Racism? The Pervasive Discrimination and Prejudice Experienced by Gypsy, Roma and Traveller Communities' (September 2017); EHRC, 'Evidence to the Education Select Committee Inquiry on the Impact of COVID-19 on Education and Children's Services' (29 May 2020) para 26.

their education.⁸⁴⁵ The type of discrimination described is teachers' conduct in terms of perpetuating cultural stereotypes and bullying by peers, and hiding their ethnicity was used as a coping mechanism to avoid further bullying and/or discrimination.⁸⁴⁶ Additionally, the EHRC points out that issues relating to access to education during pandemic-related online learning are more pronounced for GRT CYP because their parents might find it difficult to engage with their learning due to their language or literacy barriers.⁸⁴⁷

9.2.3 School Exclusions

9.35 Although the CESCR had congratulated the UK in 2002 for its newly adopted measures on permanent school exclusions,⁸⁴⁸ there exists a vast amount of literature on school exclusions and thus access to education in line with the [EHRC's human rights tracker](#), which identifies only limited progress in the UK's approach addressing them. Various reforms have not been implemented, and there is increasing evidence of unofficial/informal school exclusions.⁸⁴⁹

9.36 Cole et al. note a **significant increase of school exclusions in England** since 2012/13, on the one hand, and on the other hand, an **almost complete elimination of them in Scotland**.⁸⁵⁰ Unlike in Scotland and Wales, there seems to be a lack of the English government's understanding of the need for an interdisciplinary approach to "policies on behaviour in school, mental health, SEND and exclusions".⁸⁵¹ **Progress 8** (the English accountability mechanism for determining whether a school falls within or below the national inspection standard) introduced in 2016 is seen as an **obstacle to an adequate response to the**

⁸⁴⁵ The Traveller Movement, 'The Last Acceptable Form of Racism? The Pervasive Discrimination and Prejudice Experienced by Gypsy, Roma and Traveller Communities' (September 2017) 7.

⁸⁴⁶ *ibid* 11.

⁸⁴⁷ EHRC, 'Evidence to the Education Select Committee Inquiry on the Impact of COVID-19 on Education and Children's Services' (29 May 2020) para 26.

⁸⁴⁸ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (5 June 2002) UN Doc E/C.12/1/Add.79, para 6.

⁸⁴⁹ EHRC, 'School Exclusions and Managing 'Challenging Behaviour' – UK Government Assessment' (18 March 2021) <https://humanrightstracker.com/en/progress-assessment/school-exclusions-and-managing-challenging-behaviour-uk-government-assessment/> accessed 14 December 2021.

⁸⁵⁰ Ted Cole et al, "'Factors Associated with High and Low Levels of School Exclusions: Comparing the English and Wider UK Experience'" (2019) 24 *Emotional and Behavioural Difficulties* 374, 374.

⁸⁵¹ *ibid* 385.

needs of children and young people (CYP) at risk of exclusion because it **diverts teachers’ attention and funding** away from addressing and identifying special educational needs and disabilities (SEND).⁸⁵² The comparatively more **serious financial cuts in England** seem to have resulted in reduced support from local authorities which had formerly contributed to the avoidance of school exclusions,⁸⁵³ and, more generally in **less focus on inclusive educational practices**.⁸⁵⁴ Furthermore, non-permanent/unofficial exclusions, such as pressuring parents to change their CYP’s school, are a common practice in England, that disproportionately impacts CYP with SEND and such experiencing poverty.⁸⁵⁵ According to Harry Daniels, Ian Thompson and Alice Tawell, this can partly be attributed to the **tension between English schools’ ambition to perform well in national education attainment examinations, and the perceived threat CYP with special educational needs (SEN) pose in this regard** – resulting in “perverse incentives” for schools to exclude CYP with SEN.⁸⁵⁶ Accordingly, (un)official school exclusions “can be seen as part of a political economy of schooling through which [...] ‘troublesome’ students can be outsourced”.⁸⁵⁷

9.37 The general trend of increased school exclusions in England has been reinforced by the COVID-19 pandemic.⁸⁵⁸ Concerns are mainly raised over CYP, who had been permanently excluded from their school prior to school closures and who had not been placed in any alternative educational institution, or who had moved to different areas during lockdowns, slipping through the net.⁸⁵⁹ Additionally, it is feared that CYP who had to deal with loss or CYP who have been absorbing their families’ pressures during lockdown become disengaged with their education.⁸⁶⁰

⁸⁵² *ibid* 386.

⁸⁵³ *ibid*.

⁸⁵⁴ *ibid* 387.

⁸⁵⁵ *ibid* 386-387.

⁸⁵⁶ Harry Daniels, Ian Thompson and Alice Tawell, ‘After Warnock: The Effects of Perverse Incentives in Policies in England for Students With Special Educational Needs’ (2019) 4 *Frontiers in Education* 1,1.

⁸⁵⁷ *ibid* 4.

⁸⁵⁸ Harry Daniels et al, ‘School Exclusions Risks after COVID-19’ (*Department of Education University of Oxford*, June 2020)

⁸⁵⁹ *ibid* 2.

⁸⁶⁰ *ibid* 3,6.

9.38 With regard to **CYP who are disproportionately affected by school exclusions**, the [Department for Education](#) has found **Black Caribbean boys, Gypsy, Roma and Traveller CYP, CYP with SEND and CYP eligible for free school meals** to be particularly vulnerable – indicating the perpetuation of wider patterns of stereotyping and discrimination in English society.⁸⁶¹ The study identifies various interrelated triggers for exclusions such as racial stereotyping, mental health problems and SEN.⁸⁶²

9.39 Patricia O’Lynn identifies the persistence of school exclusions for CYP who “display disruptive behaviours” in **Northern Ireland**.⁸⁶³ There is a consistent lack of the provision of quality alternative education for CYP who have been excluded from mainstream schools.⁸⁶⁴ Although there has been an official reduction in permanent school exclusions, O’Lynn highlights the growing amount of research that points towards **a rise in informal exclusions, suspensions and in-school exclusions** such as the practice of ‘isolation’.⁸⁶⁵ This is highly problematic because such exclusions are unofficial and “go unchallenged, unquantified and unaddressed”⁸⁶⁶ with no appeal mechanism in place.⁸⁶⁷ O’Lynn’s main argument is that the international and domestic legal framework of the right to education in Northern Ireland does not fully ensure and protect excluded CYP’s right to education.⁸⁶⁸ They highlight the **inequality in access to education for excluded CYP** since the system in place does not sufficiently address the complex needs of CYP with behavioural difficulties, which in turn has led to the insufficient provision of Education Otherwise than at School (EOTAS) services⁸⁶⁹ which provide alternative/non-mainstream education to CYP who are unable to attend mainstream schools. Furthermore, O’Lynn emphasises that CYP educated in EOTAS institutions do not get the same opportunities as their mainstream school counterparts, especially with regard to the curricula in EOTAS institutions and the lack of guaranteed funding.⁸⁷⁰ Although a minimum

⁸⁶¹ Berni Graham et al, 'School Exclusion: a Literature Review on the Continued Disproportionate Exclusion of Certain Children' (*Department for Education*, May 2019) 5-6.

⁸⁶² *ibid* 10.

⁸⁶³ Patricia O’Lynn, ‘The Right to Education for Young People Excluded from Mainstream in a Divided Society’ (2016) 67 *Northern Ireland Legal Quarterly* 491, 492.

⁸⁶⁴ *ibid*.

⁸⁶⁵ *ibid* 493.

⁸⁶⁶ *ibid* 507.

⁸⁶⁷ *ibid* 508.

⁸⁶⁸ *ibid* 499.

⁸⁶⁹ *ibid* 501-502.

⁸⁷⁰ *ibid* 511.

threshold for educational provision in any type of educational institution has been established, the **alternative education's quality is still unsatisfactory**, mainly due to a disconnect “between governmental aspirations, legislation, policy and EOTAS sector operations”.⁸⁷¹

9.2.4 Bullying

9.40 Although bullying has never been mentioned in any of the CESCRC's Concluding Observations on the UK, the [EHRC's human rights tracker](#) identifies it to be an area with only limited progress over the past few years. It specifically criticises the **lack of data (collection/recording) concerning bullying** in schools and the persisting evidence of continued bullying in schools of certain groups of CYP.⁸⁷² Although schools are legally required to have policies in place for tackling bullying, there is **no standardised government approach** to it, and **schools are not required to record or report bullying**. Additionally, the [EHRC](#) stresses the **significantly lower government grant allocated to the prevention and tackling of bullying** for 2021-2024 compared to previous years.⁸⁷³

9.41 The [Department for Education](#) noted the persistence of bullying, especially for certain groups of CYP, in educational institutions in 2018.⁸⁷⁴ According to the [EHRC](#), bullying most often relates to “**race, sexual orientation, disability, sex, gender identity and reassignment, religion and household income**”.⁸⁷⁵ However, the Department for Education also highlights the fact that bullying decreases with age.⁸⁷⁶ The engagement with parents who can be hard to reach, the collaboration with other schools, the collaboration with schools across phases, and the engagement with staff who might have different ideas of bullying are identified as the main challenges for tackling bullying.⁸⁷⁷

⁸⁷¹ *ibid* 513.

⁸⁷² EHRC, 'Harassment and Bullying in Schools – UK Government Assessment' (12 July 2017) <https://humanrightstracker.com/en/progress-assessment/harassment-and-bullying-in-school-uk-government-assessment/accessed> 18 December 2021.

⁸⁷³ *ibid*.

⁸⁷⁴ Department for Education, 'Approaches to Preventing and Tackling Bullying' (June 2018) 4.

⁸⁷⁵ EHRC, 'Harassment and Bullying in Schools – UK Government Assessment' (12 July 2017) <https://humanrightstracker.com/en/progress-assessment/harassment-and-bullying-in-school-uk-government-assessment/accessed> 18 December 2021.

⁸⁷⁶ Department for Education, 'Approaches to Preventing and Tackling Bullying' (June 2018) 4.

⁸⁷⁷ *ibid* 13-17.

9.42 In accordance with paragraph 9.34, the [Anti-Bullying Alliance](#) addresses the bullying of **GRT CYP**, which is one of the biggest challenges for GRT CYP at school.⁸⁷⁸ It is highlighted that most of their interviewees describe not only being bullied by their peers but also by school staff.⁸⁷⁹ They report being negatively labelled as trouble-makers, being treated differently, being exposed to racist language which often went unchallenged, not being believed when bullying was reported, existing presumptions about GRT being bullies, and retaliation or hiding of being a GRT CYP as a coping mechanism.⁸⁸⁰

9.2.5 Educational Segregation in Northern Ireland

Legislative Change

- **Shared Education Act (Northern Ireland) 2016**
 - Shared education = “the education together of those of different religious belief; and those who are experiencing socio-economic deprivation and those who are not”
 - Promotion, encouragement, and facilitation of shared education
 - Duty on educational institutions to consider shared education
- The Department of Education asserted that the Act will not impact the development of integrated education
- Critiques
 - The mere sharing of educational facilities and services will not overcome religious segregation in Northern Ireland

881

⁸⁷⁸ Anti-Bullying Alliance, 'Bullied, Not Believed and Blamed: The Experiences of Gypsy, Roma and Traveller Pupils: Recommendations for Schools and Other Settings' (2020) 9.

⁸⁷⁹ *ibid* 6.

⁸⁸⁰ *ibid* 7.

⁸⁸¹ Shared Education Act (NI) 2016, section 2 (2); Brice Dickson and Conor McCormick, 'The Right to Education for Humanity' (2016) 67 Northern Ireland Legal Quarterly 409, 429.

9.43 As discussed in paragraph 9.4, the CESCR has addressed Northern Ireland’s educational segregation over multiple reporting cycles since 1981; nonetheless the issue has still not been resolved. Caitlin Donnelly, Clare McAuley and Laura Lundy highlight the **importance of education in relation to fostering respect for various religions, cultures, and diversity** (as can be found in [ICESCR](#) Article 13 (1)), especially with regard to conflict-emerging societies like Northern Ireland.⁸⁸² However, they note that the influence of churches on the school curriculum in Northern Ireland continues to be important, and **enrolment in integrated schools in Northern Ireland has not increased significantly in the past years**⁸⁸³ **due to a lack of supply of integrated schools.**⁸⁸⁴

9.44 Against this backdrop, Brice Dickson and Conor McCormick suggest the need for a so-called “education for humanity” in Northern Ireland, where “the Christian focus of the religious education curriculum in state-funded schools [...] suggests that a ‘narrow and incomplete’ approach to religion” is being taken.⁸⁸⁵ An education for humanity goes beyond the mere teaching *about* human rights and is aimed at reducing the risk of future conflicts by developing “citizens of the world” through a focus on the teaching of different beliefs and cultures.⁸⁸⁶

⁸⁸² ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 13 (1); Caitlin Donnelly, Clare McAuley and Laura Lundy, ‘Managerialism and Human Rights in a Post-Conflict Society: Challenges for Educational Leaders in Northern Ireland’ (2021) 41 *School Leadership & Management* 117, 118.

⁸⁸³ Caitlin Donnelly, Clare McAuley and Laura Lundy, ‘Managerialism and Human Rights in a Post-Conflict Society: Challenges for Educational Leaders in Northern Ireland’ (2021) 41 *School Leadership & Management* 117, 121.

⁸⁸⁴ Integrated Education Fund, ‘Northern Ireland Attitudinal Poll: Summary Report’ (June 2021) 3-4. Note that 71% of 2,000 survey participants in Northern Ireland agree integrated schools should be the main education model in Northern Ireland.

⁸⁸⁵ Brice Dickson and Conor McCormick, ‘The Right to Education for Humanity’ (2016) 67 *Northern Ireland Legal Quarterly* 409, 423.

⁸⁸⁶ *ibid* 409.

9.2.6 The Curriculum and Assessment (Wales) Act 2021

9.45 With a view to the future, the introduction and implications of the **Curriculum and Assessment (Wales) Act 2021** might become relevant after its implementation in phases in September 2022. It introduces a separate Welsh curriculum and provides the legislative framework for the implementation of a new curriculum for 3-16 years old. In contrast to the previous content-led curriculum, the new one is rather purpose-led.⁸⁸⁷

⁸⁸⁷ Llywodraeth Cymru Welsh Government, 'Curriculum and Assessment (Wales) Act 2021' (April 2021) <https://gov.wales/sites/default/files/publications/2021-04/curriculum-and-assessment-act-explanatory-memorandum.pdf> accessed 14 December 2021; Implementing Major Education Reforms' (*Ymchwil y Senedd Senedd Research*, 25 May 2021) <https://research.senedd.wales/research-articles/implementing-major-education-reforms/> accessed 14 December 2021.

10 The Right to Culture

10.1 This section covers matters related to [ICESCR Article 15 \(1\) \(a\)](#) containing the right of *everyone to participate in “cultural life”*⁸⁸⁸ – a concept which refers to “culture as a living process”⁸⁸⁹ and includes, *inter alia*, the right to the availability of intangible cultural goods such as **language**.⁸⁹⁰ The CESCR considers this right to be especially important in a multicultural world in order to maintain human dignity and social interaction amongst society’s members.⁸⁹¹ The Committee specifies in its [General Comment No 21](#) that this right can either be understood to **apply to individuals, a group, or a community**,⁸⁹² and includes the right to

- participate in;
- access;
- contribute to

cultural life.⁸⁹³ States are required to “respect the cultural specificities of [...] linguistic minorities [...] and] ensure that educational programmes [...] are conducted in their own language”.⁸⁹⁴ They are furthermore obliged to **respect individuals’ or groups’ right to access their linguistic and cultural heritage**.⁸⁹⁵ In order to **guarantee the implementation** of the right to participation in cultural life, States shall **take various appropriate measures, including financial measures**.⁸⁹⁶

⁸⁸⁸ ICESCR, (adopted 16 December 1966, entered into force 23 March 1976) UNTS 993 3, art 15 (1) (a).

⁸⁸⁹ CESCR, 'General Comment No 21: Right of Everyone to Take Part in Cultural Life (Art 15, Para 1(a), of the International Covenant on Economic, Social and Cultural Rights)' (21 December 2009) UN Doc E/C.12/GC/21, para 11.

⁸⁹⁰ *ibid*, para 13, 16 (a).

⁸⁹¹ *ibid*, para 1.

⁸⁹² *ibid*, para 9.


⁸⁹³ *ibid*, para 15.

⁸⁹⁴ *ibid*, para 27.

⁸⁹⁵ *ibid*, para 49 (d).

⁸⁹⁶ *ibid*, para 52.

10.1 Evolution until 2016: Analysis of Concluding Observations 1980-2016

 Negative or insufficient developments




Right	Issue	Concluding Observations: Cycle and Year							
		VI 2016	V 2009	IV 2002	III 1997	II 1994	II 1985	I 1981	I 1980
Article 15 (1) (a): right to participate in cultural life	Protection of the Irish language			-		-	-	-	-

Table 8: Overview of issues related to culture raised by the Committee in each Concluding Observation, since the first periodic review in 1981.

10.2 In relation to the right to participate in culture, the Committee has only ever highlighted one concern in the UK's six reporting cycles: the **protection of the Irish language**, a concern which only affects the devolved nation of Northern Ireland.

The Protection of the Irish Language

10.3 The Committee notes in 1997 that the Irish language in Northern Ireland receives less financial and status-related support than Gaelic in Scotland or Welsh in Wales and, therefore, recommends equalising the degree of support for all the three languages.⁸⁹⁷ Although the issue is not brought up in the following reporting cycle of the UK, it is raised again in the Special Rapporteur on Education's report in 2003. Tomaševski notes with concern that at the time, there was a trend towards English unilingualism at the expense of the preservation of the Irish language.⁸⁹⁸ The Committee reiterates its concern for the lack of protection of the Irish language in Northern Ireland in 2009 and explicitly recommends the adoption of an Irish Language Act promoting and preserving the language and cultural heritage.⁸⁹⁹ Several [shadow reports](#) from

⁸⁹⁷ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 December 1997) UN Doc E/C.12/1/Add.19, para 20, 32.

⁸⁹⁸ Commission on Human Rights, 'The Right to Education, Report Submitted by Katarina Tomaševski, Special Rapporteur, in Accordance with Commission Resolution 2002/23, Mission to the United Kingdom (Northern Ireland)' (5 February 2003) UN Doc E/CN.4/2003/9/Add.2, para 36.

⁸⁹⁹ CESCR, 'Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (12 June 2009) UN Doc E/C.12/GBR/CO5, para 37.

organisations in Northern Ireland also discuss the adoption of such a language act by firstly, referring to the CESCR's previous recommendations, secondly to the St Andrews Agreement 2006 between the British and Irish governments committing to the introduction of an Irish Language Act, and thirdly to the Northern Ireland Department of Culture, Arts and Leisure's consultation of 13,000 people regarding the possible introduction of such a language act in 2015. 95% of respondents supported the protection of the Irish language.⁹⁰⁰ This ultimately resulted in the CESCR's 2016 referral to its 2009 recommendation and the renewed recommendation for the adoption of an Irish Language Act.⁹⁰¹

⁹⁰⁰ CAJ, 'CAJ's Submission to the United Nations Human Rights Committee on Economic Social and Cultural Rights (ICESCR) on the UK's 6th Periodic Report' (April 2016) 11-12; Conradh na Gaeilge, 'Submission from Conradh na Gaeilge to the UN Committee on Economic, Social and Cultural Rights' (May 2016); Northern Ireland Human Rights Commission, 'Northern Ireland Human Rights Commission Submission to the UN Committee on Economic Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR' (April 2016) 70.

⁹⁰¹ CESCR, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 67-68.

11 Conclusion

11.1 The preamble of the International Covenant on Economic, Social and Cultural Rights recognises that all human beings are entitled to enjoy socio-economic rights. ICESCR recognises the challenges State Parties might face in ensuring these rights, often related to budget constraints. Nonetheless, they place special emphasis on the importance of progressively realising socio-economic rights without discrimination, requiring State Parties to take positive steps to the maximum of their available resources.

11.2 The primary issue that one confronts when discussing the state of the realisation of socio-economic rights in the UK is the fact that the formal legal infrastructure of the country does not explicitly incorporate or give effect to the rights enshrined in the ICESCR. The attitude of the government towards ICESCR rights seems to be, instead, to regard them as soft guiding principles, subject to the political and economic contingencies of those in power at any given instance.

11.3 The Concluding Observations between 1980 and 2016 show mixed progress towards implementing the substantive rights protected by the Covenant. While some areas present some positive development, the majority of issues have remained stagnant or have regressed. The economic crisis of 2008, and the austerity measures that it occasioned, has led to significant regression in the realisation of socio-economic rights due to the financial constraints they put on the spending capacities of governments, leading to state agencies such as the NHS and social-security agencies coming under significant pressure. Attempts to ameliorate the corrosive effects of the economic downturn through law led to further complications that made accessing socio-economic rights even more difficult.

11.4 The realisation of socio-economic rights in the UK has been further impacted by Brexit and the COVID-19 pandemic. Although the nature of the two events is very different, they have both negatively affected many of the substantive rights protected by ICESCR. The timing of the COVID-19 outbreak, following closely on the heels of Brexit, has also been unfortunate, due to which issues created by Brexit have been exacerbated by the global disruptions caused by the pandemic. This is especially true when looking at the pandemic's impact that, in many instances, further pushed many into vulnerable situations.

11.5 Despite the period of monitoring of the CESCR and the pressure civil society has exercised, the UK has not shown signs of substantive progress towards the realisation of socio-economic rights. The only viable way to see considerable progress in the enjoyment of rights protected by ICESCR is by incorporating the Covenant's provisions into national law that will push government agencies to take concrete and impactful measures. The UK will foreseeably face other challenges such as climate change. The COVID-19 pandemic has proven that the country is not prepared to face a crisis of this calibre and provide with people's basic needs, and it will likely be the case for emergencies to come.

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Annexes

Annex 1: Topics Identified within Concluding Observations

The table below shows the topics identified within each of the Concluding Observations, starting from the first review in 1980/1981 until the sixth and most recent review in 2016. Each column shows whether a topic was identified within the Concluding Observation; the number(s) refer to the paragraphs in the Concluding Observation document that discussed the topic.

Rights	Topic	Concluding Observation: Cycle and Year							
		VI 2016	V 2009	IV 2002	III 1997	II 1994	II 1985	I 1981	I 1980
Article 2- Progressive realisation of ICESCR provisions; implementat ion of the convention	Justiciability of economic, social and cultural rights	5, 6, 8	13	11, 24, 25	10, 21, 33	8	6	-	-
	Ratification of Optional Protocol on ICESCR	69	39	-	-	-	-	-	-
	Ratification of core human rights instruments	3, 70	8, 46	-	-	-	-	-	-
	Withdrawal of reservations to ICESCR articles	-	40	9, 43	-	-	-	-	-
	UK Bill of Rights concerns	9, 10	38	4	-	-	-	-	-
	Bill of rights in Northern Ireland	9, 10	10	5 (NI), 29	-	-	-	-	-
	Devolved administrations / territories implementation	2,7,8	2, 12	3	-	5, 7	-	24, 46	23
	(National) human rights commissions	-	4	5 (NI), 28	-	-	-	-	-
	(National) human rights plans of action	4 (Scot land)	14	12, 27	-	-	-	-	-
	National action plan on business and human rights	11, 12, 13	-	-	-	-	-	-	-
	Develop indicators on ECS rights, human rights assessment, statistics	71	42, 47	32	33	-	4, 34	-	-

	Public awareness of economic, social and cultural rights	72	15, 34, 45	13, 30, 44	-	8, 14	-	-	-
	Impact of tax policies	16, 17	-	-	-	-	-	-	-
	Austerity measures with a view to ICESCR's progressive realisation- impact on disadvantaged / marginalised	18, 19	-	-	8	-	-	-	-
	Legal aid- restricted access to justice due to legal aid system reforms and introduction of employment tribunal fees	20, 21	-	-	9, 22	-	-	-	-
Article 2- Inequality and discrimination	General discrimination and progressive realisation	22, 23	6, 16	14, 31	12, 22, 24	6	-	-	-
	General discrimination based on race, including nationality	-	17	14, 31	12, 24	-	5, 7, 27, 49, 67	9, 25, 47	12, 17, 33, 42, 46
	Discrimination against asylum seekers	24, 25	27	-	-	-	-	-	-
	Discrimination against disabled people	45, 46	16	14	5 (d)	16	-	-	-
	Discrimination based on gender/sex	26, 28	-	-	-	-	5, 7, 27, 61, 67	4, 29, 32	34 (NI)
Article 6- right to work	Unemployment- concern over high rate	29	20	-	-	-	12	17	-
	Unemployment- disproportionately affects certain groups -Persons with disabilities (2016, 2009, 2002) -Ethnic, religious, or other minority groups (all years) -Young people (2016, 1981) -Women (1997, 1994, 1985)	29, 30	16, 20, 21	14	12, 22	10	4, 5, 6, 7, 8, 9	17	-
	Asylum seekers- restrictions accessing employment	24, 25	-	-	-	-	-	-	-

Article 7- right to just and favourable conditions of work	High incidence of part-time work, precarious self-employment, temporary employment, use of zero hours contracts, low-paid jobs.	31, 32, 33	-	-	-	-	-	-	26
	Health and safety in the workplace	-	-	-	-	-	17, 18	-	-
	National minimum wage- insufficient for a decent standard of living	36, 37	-	15, 33	-	-	-	-	-
	Minimum wage application to young people	36, 37	41	15, 33	-	-	-	-	-
	Working conditions of migrant workers- discrimination, low-paid work, risk of abuse	34, 35	22	-	-	10	-	-	-
	Equality between men and women in workplace	26, 27	18	-	12	4-10	4	-	-
Article 8- trade union and labour rights	Right to undertake industrial action limited by procedural requirements	38, 39	-	-	-	-	21, 22, 23	-	27
	Right of employers to grant incentives to employees who don't join unions	-	-	-	11, 23	-	-	-	-
	Right to strike without losing employment	-	-	16, 34	11, 23	-	-	-	-
Article 9- right to social security	Social security	40, 41, 42	-	-	-	40	24	3, 5	9, 13, 15, 27, 28, 40
	Parental leave and benefits	43	19	-	-	-	28	10, 11, 12, 13	-
	Ratification of social security instruments	-	43	-	-	-	-	-	-
	Social care for older persons- pensions	59, 60	23	-	-	16	26	5	8

Article 10- protection of family, mothers, children	Childcare- provision of services	43, 44	-	-	-	-	26	6	-
	Punishment of children in the home	-	24	36	-	-	-	-	-
	Condition of children in care	-	-	-	13, 25	-	-	-	-
	Gender-based violence	45, 46	24	17, 35	14, 26	-	-	-	-
	Foreign partners joining British partners	-	26	-	-	-	-	-	-
Article 11- right to an adequate standard of living	Poverty	47, 48	28	18, 37	9	-	-	-	-
	Poverty- Northern Ireland	47, 48	31	18, 37	9	-	-	-	-
	General availability, affordability, accessibility	49, 50	29	20, 39	-	11, 17	-	14	-
	Discrimination of disadvantaged / marginalised	49, 50	16, 29, 30	14	-	11	-	19, 23, 15	-
	Evictions		30		17, 30	11	-	19	-
	Homelessness	51, 52	29	19, 38	17, 30	11, 4	-	-	-
	Right to food	53, 54	-	-	-	-	-	-	-
Article 12- right to health	Access to healthcare- discrimination of disadvantaged / marginalised	55, 56	32	-	-	-	-	-	-
	Access to healthcare- waiting times for surgery	-	-	-	15, 27	-	-	-	-
	Mental health- poor provision of services	57, 58	33	-	-	-	-	-	-
	Mental disabilities- impacts on general health	-	33	-	-	-	-	-	-
	Mental health- suicide in NI and Scotland	-	35	-	-	-	-	-	-
	Healthcare professional awareness of ICESCR	-	34	-	-	-	-	-	-
	Public and health professional awareness of Alzheimer's, dementia	59, 60	34	-	-	-	-	-	-

	HIV/AIDs in Caribbean territories	-	-	21, 40	-	-	-	-	-
	Termination of pregnancy in NI	61, 62	25	-	-	-	-	-	-
Articles 13-14- right to education	Discrimination in access of certain groups: -disabled children - national minorities (Travellers, Roma, Gypsies) -ethnic minorities	-	16	14, 31	-	13,15	-	-	-
	Disparity in attainment of certain groups: - depending on social/regional origin -ethnic minorities -national minorities (Travellers, Roma, Gypsies) -religious minorities -children from a poverty background -children in care -disabled children	63, 64	36	-	-	12	-	-	-
	Disproportionate effect of the lack of a universal pre-school education scheme on 16-18 years old and disabled children	-	-	-	-	13	-	-	-
	Corporal punishment in private schools	-	-	-	16, 28	-	-	-	-
	Educational provisions for prisoners	-		8	-	-	-	-	-
	Permanent exclusion from school	-		6	19, 31	-	-	-	-
	Introduction of a programme for lifelong learning	-	-	-	5 (e)	-	-	-	-
	Higher education tuition fees and student loans	65, 66	44	22, 41	-	-	-	-	-
	Financial support for private schools in developing countries	14	-	-	-	-	-	-	-
	Educational structure in Northern Ireland: segregation btw religious (state/Catholic) and integrated schools	-	-	23, 42	18, 29	-	-	40	-
Article 15 (1) (a): right	Protection of the Irish language	67, 68	37	-	20, 32	-	-	-	-

to participate in cultural life									
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Annex 2: Key Word Searches

Key Word Searches

- Three online databases
 - Ebsco Discovery
 - Westlaw UK
 - International Bibliography of the Social Sciences (IBSS)
- Work
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CDESCR) AND (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”) AND (work OR employment)
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CDESCR) AND (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”) AND (work OR employment) AND (discrimination OR “progressive realisation” OR Brexit OR COVID OR austerity)
 - (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”) AND (work OR employment) AND (discrimination OR equality)
 - (“right to work”) AND (discrimination OR “progressive realisation” OR Brexit OR COVID OR austerity)
 - (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”) AND (“gender segregation” OR “occupational segregation” OR “good work plan” OR “minimum wage” or “trade union act” OR “migrant worker”)
 - (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”) AND “right to work” AND “asylum seeker
 - “migrant work*” AND (protection OR “human rights”) AND (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”)
- Social Security and Protection
 - ("gender-based violence" OR "domestic violence" OR "violence against women" OR "childcare provision" OR "parental leave" OR "maternity leave" OR "paternity leave") AND (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”) AND ("legal framework" OR policy)

Key Word Searches (continued)

- (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESC) AND (UK or “united kingdom”) AND (social security OR poverty OR austerity measures)
- Adequate Standard of Living
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESC) AND (UK or “united kingdom”) AND (housing OR food OR poverty OR standard of living)
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESC) AND (UK or “united kingdom”) AND (housing OR food) AND (COVID OR Brexit)
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESC) AND (UK or “united kingdom”) AND (Gypsies and Travellers OR housing for disabled people OR discrimination)
- Health
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESC) AND (UK or “united kingdom”) AND (health)
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESC) AND (UK or “united kingdom”) AND (health) AND (COVID OR Brexit)
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESC) AND (UK or “united kingdom”) AND (health) AND (austerity)
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESC) AND (UK or “united kingdom”) AND (discrimination)

Key Word Searches (continued)

- Education
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESCR) AND (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”) AND (Education OR language OR educat* OR “availability of education” OR “access to education” OR “acceptability of education” OR “adaptability of education” OR “Irish language” OR “Irish language act” OR “tuition fee” OR “educational segregation” OR “educational attainment” OR “school exclusion” OR “school expulsion” OR “challenging behaviour” OR “inclusive education” OR “harassment in school” OR “harassment in education” OR “bullying in school” OR “bullying in education”)
 - (“human rights” OR “cultural rights” OR “social rights” OR “economic rights” OR ICESCR OR CESCR) AND (Brit* OR UK or “united kingdom” OR England OR Wales OR Scotland OR “Northern Ireland”) AND (Education OR language OR educat* OR “availability of education” OR “access to education” OR “acceptability of education” OR “adaptability of education” OR “Irish language” OR “Irish language act” OR “tuition fee” OR “educational segregation” OR “educational attainment” OR “school exclusion” OR “school expulsion” OR “challenging behaviour” OR “inclusive education” OR “harassment in school” OR “harassment in education” OR “bullying in school” OR “bullying in education”) AND (discrimination OR “progressive realisation” OR Brexit OR COVID OR austerity OR funding)