



# just fair

## Fourth Universal Periodic Review of the UK: Submission

March 2022

**Just Fair**<sup>1</sup> is a UK charity that is working to realise a fairer and more just society by monitoring and advocating for economic, social, and cultural rights (ESCR) in the UK. We aim to ensure that the UK Government's law, policy, and practice comply with international and domestic human rights obligations pertaining to ESCR.

**Project 17**<sup>2</sup> is a UK charity that works to end destitution among migrant children. We work with families experiencing exceptional poverty to improve their access to local authority support. We believe that all children have the right to a home and enough to eat, regardless of their parents' immigration status. To achieve our vision, we provide advice, advocacy, and support for individuals. We build capacity in other organisations, and we campaign for the improved implementation of statutory support.

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<sup>1</sup> <https://justfair.org.uk/>

<sup>2</sup> <https://www.project17.org.uk/>

## Introduction

1. This document forms the submission from Just Fair and Project 17 in advance of the fourth Universal Periodic Review of the United Kingdom.
2. The submission will focus on key overarching issues in relation to the realisation of rights in the UK (proposed reform of the Human Rights Act, implications for rights and equality in the context of Brexit, the pandemic and the cost-of-living crisis), and on one very specific issue which we believe has a disproportionate impact on the realisation of rights – the ‘No Recourse to Public Funds (NRPF) condition.

## Suggested recommendations

3. We would in particular ask State parties to consider recommending that the UK:
  - **ensures that nothing is done that in anyway undermines the Human Rights Act or the way in which it functions. Any discussion about a UK Bill of Rights must focus on building upon the protections we enjoy, including by bringing international human rights obligations into domestic legislation and by ensuring that the process of drafting a is a fully participatory one.**
  - **ensures that human rights and equality standards are built upon and increased rather than regressed as we chart our future outside of the European Union.**
  - **ensures that as we emerge from the pandemic that we build a fairer society by:**
    - **commencing Section 1 of the Equality Act 2010**
    - **ensuring the introduction of best practice single equality legislation in Northern Ireland**
    - **taking steps to legislate for international human rights standards in UK domestic legislation**
    - **signing and ratifying the Optional Protocol to ICESCR**
  - **ends the ‘No Recourse to Public Funds’ policy to ensure that everyone can claim public funds (social security and housing assistance), when they need to.**
  - **considers further measures that it could implement to better realise socio-economic rights, particularly in the context of the current cost of living crisis. As a starting point we would call upon States to recommend the UK reverses the cut to Universal Credit and examines measures that could be taken to specifically help those worst impacted, including ending the ‘No Recourse to Public Funds’ policy.**

## Proposed reform of the Human Rights Act

4. The Human Rights Act (HRA) gave further effect to many of the rights from the European Convention of Human Rights (ECHR) in domestic legislation across the UK and allowed access to UK courts for violations of Convention rights. We strongly believe that there is no case for a weakening of the HRA.
5. In the absence of domestically justiciable protection for socio-economic rights in the UK, the HRA, in limited but important ways, has acted to protect these rights, notably in relation to issues such as social security,<sup>3</sup> which is a right protected in international human rights law by Article 9 of the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)).
6. At the time of writing, a consultation by the UK Government on the future of the Human Rights Act and the potential of a new UK Bill of Rights has just closed.

## Overview of concerns

7. We are very concerned about this consultation for a number of reasons.<sup>4</sup>
  - i. We do not believe that the consultation document or indeed the UK Government more generally, made an effective ‘case for change’. The [consultation document](#) and the [report](#) of the Independent Review of the Human Rights Act Panel illustrated a well-functioning legal system where ample consideration is given to the balancing of rights, responsibilities and the role of the judiciary in a modern democracy.
  - ii. We believe that any conversation about a UK Bill of Rights should be grounded in the protection, promotion, and fulfilment of the UK’s international and domestic human rights obligations and are not convinced that this is currently the case. Indeed, we believe that the consultation is part of an attempt to more widely roll back mechanisms which properly hold the executive to account. Accountability is a key cornerstone of both a healthy democracy and the rule of law.
  - iii. Furthermore, we believe that any conversation about a UK Bill of Rights needs to be underpinned by a participative model<sup>5</sup> that allows people to have a say in their Bill of Rights. As noted by Smith, the Canadian experience illustrates that the participative model of creating a Bill of Rights increases the legitimacy of the document.<sup>6</sup> The consultation document was an intensely legal one, which focused primarily on the minutiae of the relationship between human rights, the courts, and the executive. It failed to engage those most interested – members of the public, each of whom is a rights holder.
  - iv. We are particularly concerned that the consultation was inaccessible to disabled people. Accessible versions of the consultation were released only on the original closing date for submissions, and people who needed to access these were given a 6-week extension, half the time that the rest of the population was given to respond. The UK Government must do better, including by ensuring that all members of our society can have their say on an equal basis.

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<sup>3</sup> See for example ‘In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland) [2018] UKSC 48’ where the Supreme Court by a majority of 4 to 1 that the Widowed Parent’s Allowance was incompatible with article 14 of the ECHR read with article 8, insofar as it precluded any entitlement by a surviving unmarried partner of the deceased.

<sup>4</sup> For more detail, please see Just Fair, “[Consultation Response Human Rights Act Reform: A Modern Bill of Rights](#)”, March 2022

<sup>5</sup> ‘[Developing a Bill of Rights for the UK: Executive summary](#)’, Alice Donald, with the assistance of Philip Leach and Andrew Puddephatt, 2010, p. 2

<sup>6</sup> Smith, A., ‘Bills of Rights as Process: The Canadian Experience’, *International Journal of Law in Context*, 3(4), 343-372.

- v. The devolved administrations are on their own distinctive paths with relation to the incorporation of human rights. To slightly adapt the wording of the 2012 report of the Commission on a Bill of Rights,<sup>7</sup> we are acutely aware of the sensitivities attached to discussion of a UK Bill of Rights in the context of Northern Ireland (and Scotland and Wales) and consider that this current process should not interfere with these developments in any way and that no conclusions made should be interpreted or used in such a way as to interfere in or delay these important national processes.
- vi. Implications for the future of the Human Rights Act reach beyond UK shores. While we continue to position ourselves as a world leader in human rights, the eyes of the world rightly remain upon the UK in terms of how we realise rights domestically. Previous attempts to alter or undermine the Human Rights Act have resulted in UN human rights bodies and other member states sending words of caution including:
- “Ensure that any legislation passed in lieu of the Human Rights Act 1998 — were such legislation to be passed — is aimed at strengthening the status of international human rights, including the provisions of the [Covenant](#), in the domestic legal order, and provide effective protection of those rights across all jurisdictions.” [Human Rights Committee](#), August 2015
  - “The Committee recommends that the State party undertake a broad public consultation on its plan to repeal the Human Rights Act 1998 as well as on the proposal for a new bill of rights. It also recommends that the State party take all necessary measures to ensure that any new legislation in this regard is aimed at enhancing the status of human rights, including economic, social and cultural rights, in the domestic legal order and that it provide effective protection of those rights across all jurisdictions of the State party.” [Committee on Economic, Social and Cultural Rights](#), July 2016
  - “The Committee is concerned that the proposal to replace the Human Rights Act of 1998 with a new British Bill of Rights may lead to decreased levels of human rights protection in the State party, which would negatively affect the situation of individuals protected under article 1 of the Convention...The Committee recommends that the State party undertake meaningful and broad public consultation on its proposal to revise its human rights legislation and ensure that any changes to the current human rights framework strengthens the protection of human rights, and in particular the rights of individuals protected under article 1 of the Convention.” [Committee on the Elimination of Racial Discrimination](#), August 2016
  - “Make sure that, in case the proposals for a British Bill of Rights are realized, the current level of human rights protection provided by the Human Rights Act of 1998 is maintained and improved.” [Universal Periodic Review](#), May 2017, recommendation by Ukraine to the UK
  - “The Committee takes note of the statement made by the State party’s delegation that the United Kingdom will remain a party to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and that the Government has no plans to repeal or reform the Human Rights Act 1998... However, the Committee remains concerned by repeated contradictory statements made by high-level officials of the State party in the past (art. 2).

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<sup>7</sup> ‘A UK Bill of Rights? The Choice Before Us’, Commission on a Bill of Rights, December 2012, Volume 1, para 75

- “Recalling the Committee’s previous recommendation (CAT/C/GBR/CO/5, para. 8), the State party should ensure that any legislative changes do not diminish the State party’s current level of legal protections regarding the prohibition of torture and other ill-treatment.” [Committee against Torture](#), June 2019

#### UK Conservative Party statements

8. This current consultation is part of a pattern whereby the UK’s Conservative Party has been seeking to undermine the Human Rights Act.
  - “If we want to reform human rights laws in this country, it isn’t the EU we should leave but the ECHR and the jurisdiction of its Court.” Theresa May MP (then Home Secretary) April 2016
  - “The Government is committed to scrapping the Human Rights Act and introducing a British Bill of Rights.” Elizabeth Truss MP, (then) Lord Chancellor and Secretary of State for Justice, September 2016
  - “We will update the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government.” Conservative Party Manifesto 2019.
  - “We’ve got to bring this nonsense to an end. So, today I can tell you that, under this Prime Minister and before the next election, we will overhaul the Human Rights Act.” Dominic Raab MP’s inaugural speech to the Conservative Party Conference as Justice Secretary on 5 October 2021

***We would ask States to consider recommending that the UK ensures that nothing is done that in anyway undermines the Human Rights Act or the way in which it functions. Any discussion about a UK Bill of Rights must focus on building upon the protections we enjoy, including by bringing international human rights obligations into domestic legislation and by ensuring that the process of drafting is a fully participatory one.***

## UK Exit from the European Union and the impact on human rights

9. On 31 January 2020 the United Kingdom exited the European Union. This is already having an impact on the rights and equalities standards we enjoy (see the Equality and Human Rights Commission's [Human Rights Tracker](#) for examples).
10. The protection of the Charter of Fundamental Rights has already been lost, it was drawn as a red line by the UK in its White Paper on the Repeal Bill in March 2017 and not carried over into retained EU law. The Charter brings together the fundamental rights of everyone living in the EU, including the rights protected by the [European Convention on Human Rights](#) (Article 52(3)), the constitutional traditions of the Member States, and the rights contained in other international conventions to which the EU or its Member States are parties. Unlike the ECHR, the Charter reflects the indivisibility of civil, political, economic and social rights. [Title IV \(Solidarity\)](#) for example, provides protections for a number of ESC rights including collective bargaining and action (Article 28), fair and just working conditions (Article 31), prohibition of child labour and protection of young people at work (Article 32), social security and social assistance (Article 34), and healthcare (Article 35). In addition, unlike the Human Rights Act, the Charter contains a free-standing right to prohibition of discrimination (Article 21), and a specific article on equality between men and women (Article 23).

## UK trajectory

11. We are now in a more perilous situation in relation to rights and equalities protections, and the analysis from [Murray, O'Donoghue and Warwick](#) is pertinent, "*The UK Parliament will be able post Brexit to alter any retained EU law by standard processes of law making, and thereby diminish rights protections.*"
12. On 16 September 2021, the then Minister of State at the Cabinet Office (with responsibility for Brexit), Baron David Frost [announced a review](#) of retained EU law (REUL).<sup>8</sup> In January 2022 some more clarity was given in the '[Benefits of Brexit](#)' paper where it was proposed that new powers be created to amend REUL law by way of domestic secondary legislation. Such a move would put the power to amend REUL in the hands of Government Ministers, without the oversight of Parliament.
13. The laws of the European Union have done much to realise international human rights in practice in the UK – including for example the right to work (Articles 6 and 7 of [ICESCR](#)). Employment law directives at an EU level provide for issues important to achieving just and favourable conditions of work including health and safety in the workplace (see for example [Directive 89/391/EEC](#) and [Directive 92/85/EEC](#)), rights of employees when ownership of a company is transferred ([Directive 2001/23/EC](#)), and a wide range of anti-discrimination measures (including [Directive 2000/43/EC](#), [Directive 2000/78/EC](#) and [Directive 2006/54/EC](#)).
14. Given the ways in which REUL protects international rights standards, the proposal to exclude the necessity of Minister consulting with Parliament before changes are made to standards which underpin how rights are realised in the UK is seriously concerning. This proposal could very easily further undermine our rights protections post-Brexit.

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<sup>8</sup> [As noted by Professor Banard](#), "To ensure continuity of the legal system before and after Brexit, a 'snapshot' was taken of all EU law on Brexit day and converted into UK law under the [European Union \(Withdrawal\) Act 2018](#) (EUWA). All EU law (except the Charter of Fundamental Rights), together with principles of interpretation (known as 'general principles of law') and the pre-Brexit case law of the ECJ, was 'onshored' into UK law as '[retained EU Law](#)' (REUL) on 31 December 2020."

15. Instead of diminishing rights, the UK Government has an opportunity to rethink the future trajectory of the UK, to build upon our current rights frameworks to better realise rights for people across the UK. We fear that the current administration is not grasping this opportunity.

#### Concern at UN level

16. Concern about actions of the UK post-Brexit have been raised by various human rights experts at the UN.

- *'Brexit presents an opportunity to reimagine what the United Kingdom stands for. Legislative recognition of social rights should be a central part of that reimagining. And social inclusion, rather than increasing marginalization of the working poor and those unable to work, should be the guiding principle of social policy.'* [UN Special Rapporteur on Extreme Poverty](#), April 2019
- *"Ensure that any future change in legal provisions does not constitute a retrogression in the protection of women's rights and adopt measures to ensure that its national legislation keeps pace with progress made with regard to women's rights in the European Union."* [Committee on the Elimination of Discrimination against Women](#), March 2019
- *'Prevent any negative consequences for persons with disabilities resulting from the decision to trigger article 50 of the Treaty on European Union, in close consultation with organizations of persons with disabilities.'* [Committee on the Rights of Persons with Disabilities](#), October 2017

***We would ask States to consider recommending that the UK ensures that human rights and equality standards are built upon and increased rather than regressed as we chart our future outside of the European Union.***

## The Pandemic

17. The violation of socio-economic rights, which results in inequalities, predates the current pandemic. People across the UK experienced a number of violations of these rights before the current crisis, including in terms of their rights to food, housing, education, work, and social security.<sup>9</sup> These existing socio-economic inequalities are being exacerbated by the COVID-19 pandemic.
  
18. The pandemic has disproportionately affected Black, Asian and minoritized ethnic (BAME) people, older and disabled people and their families, women, those in poverty, insecure housing or precarious employment and people who have come to the UK to escape difficult circumstances abroad. Reduced income and/or the resulting economic downturn is affecting people already on low incomes or with less accumulated wealth.<sup>10</sup> Important research published by the Institute for Fiscal Studies illustrates that the years leading up to the COVID-19 crisis, and in particular the long hangover from the last economic crisis of the late 2000s, had left households in a precarious position. The paper shows how the pandemic is set to have a significant impact on socio-economic rights and that the earnings of young adults, those of Pakistani, Bangladeshi or black ethnicity, women and those on the lowest incomes are likely to be the worst affected.<sup>11</sup>
  
19. Another example of the impact of this inequality is in the attainment of the right to education. According to research by the Education Policy Institute, disadvantaged children<sup>12</sup> are nine months behind their peers by Key Stage 2 in primary school, and an average of 18 months behind their peers at GCSE age.<sup>13</sup> Initial Ofsted analysis reported concerns that this gap has worsened after school and nursery closures of six months during the first lockdown in 2020, which carries long-term consequences.<sup>14</sup>
20. In September 2021 the Equality and Human Rights Commission updated its assessment of the UK government's progress on human rights and equality protections in England through its [human rights tracker](#). Over 36 individual rights areas there is not a single marker for 'sustained progress'. In relation to many of the rights areas a worrying picture is evidenced.
21. For example, with regards living standards, the attainment of the right to [housing](#) has had limited progress, [social security \(welfare benefits\)](#) has had no progress, and [social care](#) has regressed. Perhaps most concerning however is that the attainment of the right [adequate standard of living](#) has regressed. As the EHRC notes.
22. *"Changes to the welfare system have disproportionately affected the poorest in society, as well as those with certain protected characteristics. The UK Government has taken positive steps to*

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<sup>9</sup> Just Fair, '[Visit by the UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, to the UK from 5 to 16 November 2018 Written submission](#)' (2018)

<sup>10</sup> Office for National Statistics, '[Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 17 April 2020](#)' (1 May 2020)

<sup>11</sup> Blundell R., Costa Dias M., Joyce R., and Xu X., '[COVID-19 and Inequalities](#)', IFS, 41(2), 2020

<sup>12</sup> Disadvantage is defined by the DfE as a student who has been in receipt of free school meals at any time in the preceding six years. [Education Policy Institute \(2020\) Education in England: annual report](#)

<sup>13</sup> [Education Policy Institute \(2020\) Education in England: annual report](#)

<sup>14</sup> Ofsted (2020) COVID-19 series: briefing on schools: October 2020; Ofsted (2020) COVID-19 series: briefing on early years: October 2020 <https://www.gov.uk/government/collections/Ofsted-covid-19-series> See also: Lally, C. and Bermingham, R. (2020) [Covid-19 and the disadvantage gap Rapid response UK Parliament](#)

*protect income and jobs during the coronavirus pandemic. But the pandemic is likely to have a significant impact on socio-economic rights and the full impact is yet to be understood.”<sup>15</sup>*

## Building Back Fairer

23. We believe that as we recover from the pandemic, we can build a better society, in which everyone has the rights they need to flourish.
24. The UK’s existing substantive equality and non-discrimination statutory protection must be extended to adequately cover socio-economic inequalities across the four regions of the UK.
25. The socio-economic duty in Section 1 of the Equality Act 2010 offers a powerful tool for public authorities to actively consider the way in which their policies and decisions can address socio-economic inequalities.
26. Were it to be in force in England, the socio-economic duty would complement the Public Sector Equality Duty in Section 149 of the Equality Act 2010 which requires public bodies to have “*due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities*” on the grounds of the nine listed “protected characteristics” (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).
27. In April 2018, the Fairer Scotland Duty came into force as Section 1 of the Equality Act 2010 in Scotland.<sup>16</sup> After extensive consultations, in March 2021 the Welsh Government enacted the duty as part of its programme to help public bodies deliver A More Equal Wales.<sup>17</sup> However, successive UK Governments have failed to commence the socio-economic duty in England which means that public authorities in these jurisdictions are not technically bound by Section 1.
28. The Equality Act 2010 does not apply to Northern Ireland, where there remains a lack of robust, best practice, single equality legislation which would ‘level up’ the law in that jurisdiction, despite calls for progress from civil society there.<sup>18</sup>
29. Human rights are an essential part of the COVID-19 recovery and building a more equal society. Socio-economic rights are afforded to all without discrimination in a number of international human rights standards that successive UK Governments voluntarily ratified and with which the UK Government is obliged to comply. In particular, the UK has ratified seven legally binding international human rights treaties which relate to economic and social rights and protect all people including:
  - International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
  - International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
  - Convention on the Rights of the Child (CRC)
  - Convention on the Rights of Persons with Disabilities (CRPD)
30. However, unlike the majority of the rights contained within the European Convention on Human Rights, these rights are not currently applicable domestically in the UK.<sup>19</sup> Domestic integration of

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<sup>15</sup> [EHRC Human Rights Tracker](#)

<sup>16</sup> Scottish Government (2018) Fairer Scotland Duty: interim guidance for public bodies

<https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-publicbodies/pages/2/>

<sup>17</sup> <https://gov.wales/socio-economic-duty-overview>

<sup>18</sup> See for example: Equality Coalition, ‘[Policy Asks 2022](#)’, January 2022

<sup>19</sup> Though in March 2021 the Scottish Equalities Secretary announced plans for a [new Human Rights Bill](#) to incorporate four additional United Nations Human Rights treaties into Scots Law, including the International Covenant on Economic, Social and Cultural Rights

these rights could have a powerful impact on tackling inequality and building a fairer society as we emerge from the pandemic.

31. In addition, the UK has not yet signed or ratified the [Optional Protocol to ICESCR](#), which would allow individuals and groups in the UK to submit communications directly to CESCR where they believe themselves to be victims of a violation of the rights set out in ICESCR. Such a move would be important not only to help further realise rights in the UK, but also to further strengthen the UN human rights monitoring system.

***We would ask States to consider recommending the UK ensures that as we emerge from the pandemic that we build a fairer society by:***

- ***commencing Section 1 of the Equality Act 2010***
- ***ensuring the introduction of best practice single equality legislation in Northern Ireland***
- ***taking steps to legislate for international human rights standards in UK domestic legislation***
- ***signing and ratifying the Optional Protocol to ICESCR***
- ***ensuring nothing is done to undermine the Human Rights Act 1998, or the ways in which it operates.***

## No Recourse to Public Funds

32. **No recourse to public funds (NRPF)**<sup>20</sup> is an immigration condition imposed on undocumented migrants and people who have leave to remain subject to a NRPF restriction. ‘Public funds’ are listed in Paragraph 6 the Immigration Rules<sup>21</sup> and s115 of the Immigration and Asylum Act 1999.<sup>22</sup> This is an exhaustive list so payments or services that are not on that list are not public funds. A person with NRPF cannot access most welfare benefits or social housing but they can access publicly funded services that are not listed as ‘public funds’.
33. Without the protection of social security, many families with NRPF with family members not in work, or not earning enough income to live on through work, end up living in destitution and are at high risk of homelessness, exploitation and abuse.<sup>23</sup> The extreme impact of the NRPF policy on the right to social security illustrates the interconnectedness of rights, as often many other rights are negatively impacted such as the right to adequate standard of living<sup>24</sup> (including food and housing), health,<sup>25</sup> equality,<sup>26</sup> education,<sup>27</sup> and work<sup>28</sup> (including just and favourable conditions).<sup>29</sup> As noted by the Equality and Human Rights Commission, the NRPF policy has been found to breach the Human Rights Act and to be unlawful in certain circumstances.<sup>30</sup>
34. A recent report by Citizens Advice<sup>31</sup> highlighted that the majority of people with NRPF are in work, (60% respondents said they were in paid work before the pandemic) and therefore are paying taxes into a benefit system which they broadly cannot access. In addition, 37% of those currently working are key workers, employed in industries like food delivery and health and social care that has helped keep the UK going during the pandemic.
35. The UK Government does not produce data on the overall number of people living in the UK with NRPF attached to their immigration status or the number of dependants in those households, however other organisations have worked to gauge the scale of people impacted. The Migration Observatory at the University of Oxford estimate by the end of 2019, there were at least 175,000 children under 18 in families who would be expected to have NRPF and around 1.4 million adults.<sup>32</sup> In addition to this there are estimated to be approximately 215,000 undocumented children in the UK who are also subject to the NRPF policy<sup>33</sup>. These numbers do not account for the number of British children subject to the NRPF policy due to their parents having NRPF.
36. The **Nationality and Borders Bill** [currently making its way through the UK Parliament](#) could increase the number of people subject to NRPF. We are particularly concerned about a proposed

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<sup>20</sup> For more on this issue, please read our [recent submission](#) to the UN Special Rapporteur on Extreme Poverty

<sup>21</sup> Available here at para 6.2: [Immigration Rules: introduction - Immigration Rules - Guidance - GOV.UK](#) ([www.gov.uk](http://www.gov.uk))

<sup>22</sup> Available here: [Immigration and Asylum Act 1999 \(legislation.gov.uk\)](#)

<sup>23</sup> ‘[Sometimes my belly will just hurt](#)’: No Recourse to Public Funds and the Right to Food’ Sustain, Project 17, CAWR (2019)

<sup>24</sup> Article 11 of the International Covenant on Economic, Social and Cultural Rights

<sup>25</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights

<sup>26</sup> Article 3 of the International Covenant on Economic, Social and Cultural Rights

<sup>27</sup> Article 13 of the International Covenant on Economic, Social and Cultural Rights

<sup>28</sup> Article 6 of the International Covenant on Economic, Social and Cultural Rights

<sup>29</sup> Article 7 of the International Covenant on Economic, Social and Cultural Rights

<sup>30</sup> For more information, see the Equality and Human Rights Commission’s ‘[Human Rights Tracker](#)’

<sup>31</sup> ‘[How do I survive now? The impact of living with No Recourse to Public Funds](#)’, November 2021, Charles Smith, Papatya O’Reilly, Rebekka Rumpel and Rachel White for Citizens Advice

<sup>32</sup> ‘[Children of migrants in the UK](#)’, August 2020, The Migration Observatory at The University of Oxford

<sup>33</sup> ‘[London’s children and young people who are not British citizens: A profile](#)’, Greater London Authority, January 2020.

clause<sup>34</sup> which sets out that refugees will be discriminated against based on the method in which they arrive to the UK. The Bill sets out that limited services will be granted to refugees on this basis, and that those deemed to have arrived in what the Bill considers irregular routes could be subject to the NRPf condition, have limited family reunion rights, and have restricted access to indefinite leave.<sup>35</sup>

## Particular Impacts

37. The impact of the NRPf policy is felt disproportionately by groups who mainly overlap with 'protected characteristics' as defined by the [Equality Act 2010](#)<sup>36</sup> including women, disabled people, pregnant (and maternity stage) people, older people and Black, Asian minoritized ethnic British children. A 2019 study<sup>37</sup> found:

- Women constitute an estimated 85% of those applying to have the NRPf condition removed. Nearly all these women are single mothers. The NRPf condition indirectly discriminates against women on account of their sex because - amongst other factors - it restricts their access to full-time employment because of curtailments to free childcare entitlements.<sup>38</sup>
- The NRPf condition prevents people with low-incomes from earning a living wage through employment because it excludes them from in-work benefits.<sup>39</sup>
- Disabled people, pregnant (and maternity stage) women and elderly people are often unable to work and simultaneously face higher outgoing costs, causing the negative impact of the NRPf condition to be greater.<sup>40</sup>
- 90% of the families involved in the study had at least one British child. British children whose parents are subject to NRPf receive less favourable treatment than their British peers who have British parents. Examples of this unequal treatment include British children from NRPf families being restricted from benefiting from childcare, free school meals and social housing. More than 95% of the British children in the study were BAME children. The less favourable treatment faced by British children from NRPf families on the grounds of national origin is therefore linked to indirect discrimination on the grounds of race.
- 74% of 66 people surveyed experienced at least one day when they were subject to NRPf where they could not afford to eat a hot and nutritious meal. 90% of these were women with children.

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<sup>34</sup> Currently Clause 11, but as the Bill is moving through the UK Parliament, this is subject to change. The most current version of the Bill can be accessed here: <https://bills.parliament.uk/bills/3023/publications>

<sup>35</sup> For more information about the potential impacts, see minutes of recent evidence to the All Party Parliamentary Group on NRPf, including testimony from those with lived experience of the policy: <https://appgnrpf.files.wordpress.com/2021/11/03.11.2021-more-distinctions-fewer-chances-to-rebuild-livelihoods-meeting-minutes.pdf>

<sup>36</sup> Protected characteristics as listed in the Equality Act 2010 include: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

<sup>37</sup> 'Access Denied: The cost of the 'no recourse to public funds' policy' June 2019, by Agnes Woolley, funded by Immigration Law Practitioners' Association (ILPA) and the Strategic Legal Fund (SLF)

<sup>38</sup> For more on this, see 'How do I survive now? The impact of living with No Recourse to Public Funds', November 2021, Charles Smith, Papatya O'Reilly, Rebekka Rumpel and Rachel White for Citizens Advice at page 11

<sup>39</sup> *Ibid.*, p.13

<sup>40</sup> *Ibid.*, p.12

- Nearly all those surveyed (63/66) had experienced severely inadequate and overcrowded accommodation whilst subject to NRPF.
  - 6% of telephone respondents were single women who had experienced street homelessness with their children whilst subject to NRPF.
38. In addition, a recent survey by Citizens Advice<sup>41</sup> found that 78% of those consulted who had NRPF were BAME. Again, it's important to highlight that the Home Office does not publish statistics on the ethnicity of those subject to the NRPF policy, and so we rely upon civil society organisations (CSOs) to undertake data gathering.
39. What is clear from these studies is that the NRPF policy has a discriminatory impact upon particular groups who already face other discriminations and thus the impact upon them is compounded. This contributes to driving people into situations of extreme poverty and making them vulnerable to exploitation and abuse as a result of not having access to an adequate right to social security. This has important implications for the right to equal enjoyment of all economic, social, and cultural rights.<sup>42</sup>
40. In addition, as noted by Citizens Advice,<sup>43</sup> (with just one exception,)<sup>44</sup> eligibility for benefits designed to support children is determined by the immigration status of the parents or carers the children live with. As a result, many children who are themselves British citizens or have indefinite leave to remain, are unable to receive entitlements such as [Child Benefit](#),<sup>45</sup> because their resident parent(s) have NRPF. Of people with NRPF polled by Citizens Advice, 27% are parents who share a household with their children.
41. Again, due to a lack of data from the UK Government, we rely upon the work of CSOs to extrapolate the potential impact of these numbers. Citizens Advice applied this percentage to the Oxford Migration Observatory estimate of adults with NRPF and found that it equates to around 329,000 parents in the UK. They also note that parents with NRPF face some of the most challenging circumstances and have almost no state support. They can't access any of the core benefits designed to support the cost of bringing up children, including Child Benefit and [the child element of Universal Credit](#). Although state school positions are available, children whose parents have NRPF can't (in normal circumstances) get free school meals<sup>46</sup> or the additional educational funding associated with them.<sup>47</sup>
42. In their recent submission to the List of Issues Prior to Reporting for the Committee on the Rights of the Child, the Children's Rights Alliance for England (CRAE), noted the stark and multifaceted impact on children's rights that the NRPF policy has, "*Children in households affected by NRPF face high levels of destitution, hunger, and homelessness.*"<sup>48</sup>

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<sup>41</sup> ['How do I survive now? The impact of living with No Recourse to Public Funds'](#), November 2021, Charles Smith, Papatya O'Reilly, Rebekka Rumpel and Rachel White for Citizens Advice

<sup>42</sup> Article 3 of the International Covenant on Economic, Social and Cultural Rights

<sup>43</sup> ['How do I survive now? The impact of living with No Recourse to Public Funds'](#), November 2021, Charles Smith, Papatya O'Reilly, Rebekka Rumpel and Rachel White for Citizens Advice

<sup>44</sup> [Disability Living Allowance](#)

<sup>45</sup> For more examples, see [Written evidence from Project 17, The Unity Project and The Children's Society](#) to the UK Parliament's Work and Pensions Committee Inquiry, 'Children in poverty: No recourse to public funds', September 2021 at page 8

<sup>46</sup> In Wales, schools currently have discretion to provide free school meals for Children whose families are subject to NRPF and can claim this back from the Welsh government: WQ81376(e), 23 October 2020

<sup>47</sup> During the pandemic, eligibility for free school meals was extended to some children with NRPF, it is not known whether this will continue. Department for Education, ['Coronavirus \(COVID-19\): temporary extension of free school meals eligibility to NRPF groups'](#) (October 2021).

<sup>48</sup> ['England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting \(LOIPR\)'](#) Children's Rights Alliance for England (CRAE) 2020

43. Project 17 note that undocumented people working informally are often deterred from accessing support under Section 17 for fear of criminal sanctions. If they ask the local authority for support, they will have to explain their income, including any informal work. There is a risk that the local authority could then report this to the police and criminal sanctions will follow. As a result, parents are trapped - they must keep working to feed their families but can't ask for support because of fear of being found out. Project 17 have experienced some instances of local authorities using this fear of prosecution as a gatekeeping tactic - implying that they will report people to the police for illegal working if requests for support continue.
44. Mitigations to the policy are unevenly applied and can be complex to the point of being inaccessible in practice. While there have been some extensions of support in response to the pandemic, there are still people falling through the gaps in support and this **will only be remedied by ensuring that everyone has access to adequate social security by bringing the NRPF policy to an end.**

*We would ask States to consider recommending that the UK ends the 'No Recourse to Public Funds' policy to ensure that everyone can access social security protection as and when they need to.*

## A Perfect Storm

45. The UK exit from the European Union, the unequal impact of the pandemic and a cost-of-living crisis (exacerbated, but not caused by, the invasion of Ukraine by Russia) has created a perfect storm for those most at risk of violation of their socio-economic rights, including those with No Recourse to Public Funds. The UK is experiencing a perfect storm which threatens to increase poverty, inequality and destitution.
46. This crisis is happening in the context of the [recent cut](#) to Universal Credit and an [imminent rise](#) in National Insurance contributions. Both measures will hit those least able to afford it the hardest.
47. The statistics about the crisis and the projected impact make for stark reading, for example:
  - The [Resolution Foundation notes](#) that the higher energy cap, due to be introduced on 1 April 2022, will see energy costs in England jump by more than **50%** overnight, with the average annual bill set to rise from £1,277 to around £2,000
  - The Resolution Foundation [has also warned](#) that the monthly inflation peak in Spring 2022 could **be as high as the 8.4%** reached in 1991, and that prices in 2022/23 will be **up 7.6%** from 2021/22
  - The [Office for National Statistics reported](#) that the Consumer Prices Index (CPI)[\[1\]](#) rose by **4%** in the 12 months to December 2021
  - Chairman of Tesco, John Allan, [warned](#) this week that “the worst is yet to come” on food price inflation, and predicted it will soon hit **5%**
  - Joseph Rowntree Foundation ([JRF](#)) [predicts](#) households on low incomes will be spending on average **18%** of their income (after housing costs) on energy bills after April. For single adult households on low incomes this rises to **54%**
  - [The National Institute of Economic and Social Research has projected](#) that the combined effect of higher prices and higher taxes will lead to a **30%** rise in destitution[\[2\]](#) because of the differential impact of inflation upon the poor
48. While the UK Government has announced some initiatives to help tackle these issues, their impact will be limited.

## Action needed to realise rights

49. Just Fair has joined over 50 other organisations in sending the UK Government a [letter](#), organised by [Child Poverty Action Group](#), calling on them to, “increase benefits by at least 7% in April to match inflation, and ensure support for housing costs increases in line with rent.”
50. If social security levels are not increased by at least 7% then there will, in effect, be a cut to incomes in real terms. As prices of essentials rise (as detailed above) people’s ability to afford these items must match these rises, otherwise there will be a regression in the realisation of the right to an adequate standard of living and the right to social security.
51. The United Nations has made it clear that appropriate measures to realise these rights include, but go beyond, legislation. Indeed,
52. “Other measures which may also be considered “appropriate” for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures.”

(UN [Committee on Economic, Social and Cultural Rights, General comment No. 3](#): The nature of States parties' obligations)

53. Increasing social security levels and support for housing costs would be examples of these measures.

***For this reason, we would encourage States to recommend that the UK considers further measures that it could implement to better realise socio-economic rights, particularly in the context of the current cost of living crisis. As a starting point we would ask States to recommend the UK reverses the cut to Universal Credit and examines measures that could be taken to specifically help those worst impacted, including ending the 'No Recourse to Public Funds' policy.***