Equality and
Human Rights
Commission

Submission to the UN Human Rights Council

Universal Periodic Review in Great Britain

March 2022

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Introduction

The Equality and Human Rights Commission (EHRC) is an independent body with a mandate covering both equality and human rights. We are tasked by the United Kingdom (UK) Parliament with encouraging good practice in relation to human rights,[1] and have a responsibility to assess and report on the UK's progress in achieving the human rights in the treaties it has chosen to ratify.[2]

This report provides information to the United Nations (UN) for the UK's fourth assessment under the Universal Periodic Review (UPR). The UPR is a peer review process conducted by the UN Human Rights Council to assess the human rights situation in every UN Member State. The UK's last review was in 2017.

In this report, we offer recommendations on how to better protect human rights across 11 different topics. The analysis is based on our assessments of UK progress since 2016 on our human rights tracker, an online tool that tracks what action the UK and Welsh governments have taken in response to UN human rights recommendations. Our full examination of government action can be found on the relevant pages of the tracker.

Our aim is to encourage the UK and Welsh governments to use the UPR reporting process, and our human rights tracker, to strengthen their efforts to assess their progress in protecting human rights and improve compliance with their international obligations. In fulfilling our role as a National Human Rights Institution (NHRI), we acknowledge the strengths of current human rights standards and laws in the UK and also recognise the significant impact that the COVID-19 pandemic has had on some of those rights. We have considered the context before and during the pandemic.

Devolution and geographic scope of this report

The UK Parliament has devolved various powers to the Scottish Parliament, the Welsh Parliament and the Northern Ireland Assembly. It maintains responsibility for England and for matters that have not been devolved. The UK Government and the devolved governments are responsible for implementing international human rights obligations.

This submission covers England and Wales for all the thematic areas, and Scotland for those issues reserved to the UK Parliament, in line with our statutory mandate. Our recommendations are aimed at the UK and Welsh governments, though they may also be relevant to other devolved administrations. The Scottish Human Rights Commission's submission will cover areas devolved to the Scottish Parliament, and the Northern Ireland Human Rights Commission's submission will cover Northern Ireland.

1 General measures of implementation

UN Sustainable Development Goal (SDG) 16.

1.1 Equality and human rights framework

There is an increasingly divergent approach to domestic incorporation of human rights across Britain. The UK Government has ratified seven of the nine core human rights treaties but maintained its position not to incorporate them into domestic law.[3] The devolved governments of Wales and Scotland are considering further incorporation of UN treaties.[4]

The European Convention on Human Rights (ECHR) is incorporated in UK domestic law through the Human Rights Act 1998. In December 2021, following an independent review,[5] the UK Government opened a consultation on proposals to revise the Act and replace it with a bill of rights.[6] We welcome some proposals, such as the UK remaining a party to the ECHR. We are concerned that others, if implemented, would reduce human rights protections for certain groups and limit access to redress, for example by introducing a 'permission stage'[7] that could make it harder to bring human rights claims.

The Equality Act 2010 is an important legislative framework to protect people from discrimination and advance equality.[8] There is scope for the UK Government to further strengthen protections by implementing it in full.[9] In March 2021, the socio-economic duty came into force in Wales. This requires public bodies, when making strategic decisions, to 'have due regard to' (consciously consider) how their decisions could reduce inequalities linked to socio-economic disadvantage.[10]

Recommendations:

The UK and Welsh governments, where relevant, should:

- enhance the status of all seven ratified human rights treaties in domestic law to ensure access to enforceable rights

- ensure that any changes to the human rights legal framework do not lead to a reduction in legal protections or limit access to justice for human rights violations

- work with partners to improve human rights education and increase understanding of human rights among the public, media, policymakers and public authorities

- review the unimplemented provisions of the Equality Act 2010, fill any gaps in protection, and ensure that public bodies fulfil their responsibilities under the Public Sector Equality Duty (PSED).

2 Living standards

SDG 1, 2 and 10.

2.1 Poverty

Poverty rates are one key measure of living standards. In 2019–20, there were 14.5 million people in the UK in relative poverty and 11.7 million people in absolute poverty after housing costs,[11] with a general rise in the proportion of people in in-work relative poverty since 2012–13.[12] Poverty disproportionately affects some ethnic minorities due to a range of factors, such as being more likely to be in lower-paid employment.[13] On average, between 2017–18 and 2019–20, 55% of people in households where the head of the household was Bangladeshi lived in relative poverty (after housing costs) compared with 19% of those headed by White individuals.[14] Additionally, although relative poverty for working-age adults has been broadly stable, relative child poverty (after housing costs) has increased since 2014, and was at 31% in 2020.[15]

Changes to social security made by the UK Government since 2010, including changes to Universal Credit and child benefit payments, have had a disproportionately negative impact on certain ethnic minorities, disabled people and women,[16] and contributed to child poverty.[17]

In 2021, the Ministry of Housing, Communities and Local Government became the Department for Levelling Up, Housing and Communities as part of a UK Government commitment to 'ensure that no community is left behind', especially during recovery from the pandemic.[18]

Recommendations:

The UK and Welsh governments, where relevant, should:
- examine the factors behind the higher poverty levels among groups at risk, such as certain ethnic minorities and children, including changes to social security that disproportionately affect some protected characteristic groups, and develop strategies to address them.

2.2 Social care

Before the COVID-19 pandemic, adult social care was already under pressure in England and Wales due both to rising demand, because of factors including demographic changes, and reductions in government funding.[19] The pandemic restricted the provision of care and led to concerns about the ability to keep care home residents safe, notably disabled and older people.[20]

The UK Government has announced new funding arrangements for adult social care and committed to implementing proposals to transform social care in England.[21] There have been some welcome reforms to the social care policy framework in Wales,[22] but there is a lack of available data about specific levels of unmet need.

We are concerned about 'closed culture' residential environments. There have been reports of inhuman or degrading treatment in residential care settings, such as the physical and psychological abuse of patients with learning disabilities at Whorlton Hall hospital in 2019.[23]

Recommendations:

The UK and Welsh governments, where relevant, should:

- ensure that social care policy, including proposed reforms, has a measurable impact on enhancing the rights of people with care needs, including through robust, transparent regulation that promotes equality and human rights

- incorporate the right to independent living in domestic law to ensure disabled people's rights in, and to, care are protected and can be enforced

- publish and implement a new action plan without further delay to improve the treatment of people with learning disabilities and autism, and significantly reduce the number detained in inpatient settings.

3 Health

SDG 3 and 10.

3.1 Access to healthcare

The National Health Service (NHS) is publicly funded and free at the point of use. The NHS response to the pandemic in England and Wales has been considerable, with the COVID-19 vaccination programme achieving widespread coverage.[24] Due to the reallocation of resources to deliver COVID-19 care, access to treatment for other conditions has been severely restricted.[25]

Waiting times for treatment were already increasing in the decade before the pandemic.[26] While funding for mental health services in England and Wales has increased,[27] demand continues to exceed available provision, including because of the pandemic.[28]

There is evidence that certain groups experience persistent inequalities in accessing healthcare, including people with learning disabilities,[29] older people,[30] people seeking asylum,[31] transgender people,[32] same-sex couples,[33] some ethnic minority groups,[34] including Gypsies, Roma and Travellers[35], and homeless people.[36]

The move to online and telephone healthcare services during the pandemic made access easier for some but posed particular difficulties for digitally excluded people[37] and some disabled people with certain impairments.[38]

Recommendations:

The UK and Welsh governments, where relevant, should:

- ensure access to high-quality mental health services, including preventative support to minimise the risk of crisis, which are sensitive to particular needs of different groups
- address remaining barriers that protected characteristic groups face in accessing healthcare, including by ensuring that healthcare providers have improved knowledge of patients' rights and by implementing digital inclusion strategies.

4 Education

SDG 4 and 10.

4.1 Educational attainment

In 2019, the attainment gap between pupils from disadvantaged socio-economic groups (measured as those eligible for free school meals at any point in the past six years) and other pupils widened at primary school level in England for the first time in over a decade.[39] The attainment gap between pupils eligible for free school meals and their peers also widened in Wales in 2019.[40] In England and Wales, children from certain ethnic minorities, children who have free school meals and children with special educational needs have lower attainment rates in secondary school than others.[41] Girls continue to perform better than boys.[42]

Attainment gaps have been linked to numerous factors, including inequalities in the learning outside school settings and in access to early years education, but also to differential practices in schools, including some evidence of bias in teacher-assessed grades.[43]

The move to online learning during the pandemic has had a disproportionately negative impact on certain children, including digitally excluded and disabled children who experienced reductions in education and therapeutic support.[44] There is limited data on the impact of the pandemic on participation in online learning,[45] loss of learning and attainment for protected characteristic groups.[46]

Recommendations:

The UK and Welsh governments, where relevant, should:

- increase efforts to tackle gaps in educational attainment across protected characteristic groups and ensure that all children have the opportunity to reach their full potential through education
- collect robust data on the impact of the pandemic on loss of learning and the impact of recovery programmes, broken down by protected characteristic, to monitor and mitigate risks to particular groups of children.

5 Work

SDG 8 and 10.

5.1 Conditions at work

The UK has strong employment protections overall, but a lack of basic employment rights, such as sick pay, for people in some insecure work means that they had little choice but to continue working during the pandemic, even when unwell.[47] Young people are over-represented in the 'gig economy'[48] and ethnic minority workers are more likely than White workers to be on zero-hours contracts.[49]

Discrimination and harassment in the workplace continue to affect some groups.[50] For example, in a 2020 survey about the treatment of pregnant women and new mothers at work, 25% of respondents said they had been treated unfairly during the pandemic.[51]

There has been welcome progress on reducing pay gaps. The gender pay gap in hourly earnings among all employees in the UK has gradually declined, and was 15.4% in 2021.[52] Analysis from 2019 shows that the ethnicity pay gap has narrowed to its lowest level since 2012. It was 2.3% in 2019, reflecting considerable variation across different ethnic groups, with Pakistani, White and Black African, and Bangladeshi groups the lowest paid.[53] The disability pay gap was broadly stable between 2014 and 2018, and was 12.2% in 2018.[54] Pay gaps vary according to factors such as sex, age, region and impairment.[55]

Recommendations:

The UK and Welsh governments, where relevant, should:

- improve the employment protections available to people in insecure work, including by increasing access to statutory sick pay, and fund enforcement bodies so they increase compliance with employment law
- amend the Equality Act 2010 to prohibit employers asking job applicants questions related to pregnancy and maternity

- take steps to improve transparency on recruitment, retention, progression and pay for ethnicity and disability pay gaps.

6 Justice, liberty and personal security

SDG 5, 10 and 16.

6.1 Violence against women and girls (VAWG)

Data from the year ending March 2020 show that an estimated 1.6 million women in England and Wales had experienced domestic abuse in the preceding year.[56] Some groups are disproportionately likely to be subjected to violence, including disabled and ethnic minority women and girls.[57] Many relevant support services saw increased demand during the pandemic.[58]

Domestic abuse and sexual violence are under-reported,[59] and the pandemic exacerbated the long-term trend in falling prosecutions for rape and domestic abuse.[60] There are concerns about insufficient funding for VAWG services, particularly specialist provision for ethnic minority, disabled, and lesbian, gay, bisexual and trans (LGBT) victims.[61]

The Domestic Abuse Act 2021 introduced positive reforms, including a duty on local authorities in England to provide accommodation-based domestic abuse support.[62] However, some gaps remain. The new duty does not cover community-based services, for example.[63]

Recommendations:

The UK and Welsh governments, where relevant, should:

- improve police-recorded crime and outcome data and Crown Prosecution Service performance data to include VAWG victims' protected characteristics, then publish and use the data to inform policymaking

- ensure sustainable long-term funding for specialist VAWG services, with ring-fenced funding for specialist 'by and for' services for ethnic minority, disabled and LGBT victims, and introduce long-term statutory solutions to address gaps in the availability of specialist community-based domestic abuse services.

6.2 Policing

Some aspects of policing in England and Wales have negatively affected the human rights protection of certain groups. People from certain ethnic minority groups remain more likely to come into contact with the criminal justice system. For example, in 2020–21, the rate of 'stop and search' against Black people was seven times higher than against White people.[64] Disproportionality is particularly pronounced for 'suspicionless' stops,[65] with around 30% carried out on Black or Black British people in 2020–1.[66]

New technologies in policing pose challenges to human rights such as the right to privacy.[67] Automated facial recognition technology, primarily used to identify suspected criminals, has been shown to disproportionately misidentify Black people and women.[68]

The UK Government introduced legislative proposals in 2021 that would increase police powers in certain areas.[69] The proposals include a new criminal offence of trespass directed against unauthorised encampments in England and Wales, which risks exacerbating inequality and discrimination faced by Gypsies, Roma and Travellers.[70] We are also concerned that the expansion of powers to impose conditions on, and police, peaceful protest would be inconsistent with the rights to freedom of expression and assembly.[71]

Recommendations:

The UK and Welsh governments, where relevant, should:

- ensure that police forces use stop and search powers effectively and proportionately, including by developing guidelines with specific standards for the prevention of racial profiling
- review the use of automated facial recognition and predictive programmes in policing, pending completion of independent impact assessments and the adoption of mitigating action that is evaluated on an ongoing basis
- direct local authorities to increase the availability of Gypsy and Traveller sites, and regularly report on how and where funding for housing is being used to increase site availability
- reconsider the proposed expansion of powers to police peaceful protest.

6.3 Criminal justice institutions

England and Wales have one of the highest imprisonment rates in Western Europe[72] and people from ethnic minorities are significantly over-represented.[73] The UK Government has taken some steps to understand and tackle the identified racial disparities.[74] The rate of self-harm in prisons had increased by 2020 to two and a half times the rate in 2012[75] and the number of self-inflicted deaths remains high.[76] Use of force is widespread and particular concerns have been raised about PAVA incapacitant spray.[77]

At 10 years old, the minimum age of criminal responsibility in England and Wales is inconsistent with international standards.[78] While the overall number of children and young people in youth custody continues to decline, the proportion from ethnic minority groups increased to more than 50% by 2020–21.[79] Reasons for this disproportionality are not fully understood.[80] Self-harm in youth custody increased between 2015 and 2020, and is especially high among girls.[81] Use of force also increased in that time.[82] The UK Government has not banned pain-inducing restraint on children,[83] despite calls to do so,[84] though it has accepted some recommendations from an independent review.[85]

Recommendations:

The UK and Welsh governments, where relevant, should:

- invest in appropriate alternatives to imprisonment and take steps to understand and address the causes of disproportionate numbers of people from ethnic minorities being in prisons and youth custody
- develop a holistic welfare-based system, including early intervention and therapeutic services, for dealing with the harmful behaviour of children
- raise the age of criminal responsibility to at least 14, in line with international human rights standards, and
- implement effective monitoring and oversight for all forms of restraint and restrictive interventions to prevent their inappropriate use, and prohibit techniques that deliberately inflict pain on children.

6.4 Immigration

The 'hostile' or 'compliant environment' policy agenda – intended to make it harder for migrants with irregular status to live, work and access services in the UK – continues to be criticised for its impact on human rights.[86] This includes the deterrent effect that data-sharing between service providers has on migrants' access to healthcare, policing and other essential services.[87]

We found that the Home Office did not comply with the PSED in considering the impact of 'hostile environment' policies on Black members of the Windrush generation.[88] Individuals who resided lawfully in the UK lost their jobs and homes, and some faced deportation.[89]

There has been a general decrease in the number of people entering immigration detention in the UK since 2015. Despite a substantial reduction in people entering detention during the pandemic, numbers have since returned to pre-pandemic levels.[90] There is no statutory time limit on detention.[91]

Recommendations:

The UK Government should:

- prohibit the use of data collected or held by essential public services for immigration enforcement purposes
- introduce a 28-day time limit on immigration detention, in line with other countries, and expand community-based alternatives to ensure immigration detention is used only as a measure of last resort.

7 Participation

7.1 Political and civic participation

Political and civic participation is crucial to democracy. There are gaps in the data on the diversity of members of parliament (MPs) because it is not collected systematically,[92] though there have been increased proportions of ethnicity minority and women MPs,[93] and an increase in ethnic minority people in UK government senior cabinet positions.[94]

However, women, ethnic minorities and disabled people remain under-represented in politics.[95] Women, ethnic minority, and LGBT parliamentary candidates are disproportionately affected by intimidation based on prejudice, particularly through social media.[96]

Recommendations:

The UK and Welsh governments, where relevant, should:

- implement section 106 of the Equality Act 2010 to require political parties to publish diversity data about their candidates

- establish a robust regulatory framework for online service providers that gives people effective protection from abuse and harassment, together with protection of freedom of expression in democratic debate.

Contacts

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Published April 2022

ISBN: 978-1-84206-856-4

Endnotes

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