

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

Contents

List of acronyms	3
Introduction	5
Key developments since August 2015.....	7
The role of the EHRC	8
Devolution and the scope of this submission	9
Section 1: Enhancing the status of ICESCR in domestic law – Article 2 and List of Issues paragraph 1.....	11
1.1 ICESCR in domestic law and policy in the UK.....	11
1.2 A British Bill of Rights and socio-economic rights	12
1.3 Enhancing the status of ICESCR in domestic law	12
Section 2: Adequate standard of living and social security – Articles 9 and 11	15
2.1 Welfare Reform and Work Act in the UK – List of Issues, paragraphs 4 and 15	15
2.2 Changes to tax credits: List of Issues, paragraphs 4 and 15	19
2.3 Devolution of certain social security matters through the Scotland Act.....	20
2.4 Impact of social security reforms on disabled people in the UK – List of Issues, paras 4 and 15.....	20
2.5 Income poverty of adults in the UK – List of Issues, paragraph 21	26
2.6 Housing in England and Wales – List of Issues, paragraphs 23, 24 and 25 ...	27
Section 3: Access to work and working conditions in the UK – Articles 6 and 7.....	33
3.1 Access to work in the UK – List of Issues, paragraph 9.....	33
3.2 Working conditions in the UK – List of Issues, paragraphs 10, 11 and 13	38
3.3 Discrimination at work in the UK – List of Issues, paragraphs 8 and 16	46
3.4 Trade Union Bill	49
Section 4: Access to justice, Article 2, List of Issues paragraph 17.....	53
4.1 Key impacts of reforms to the civil law justice system in England and Wales.	54

4.2 Impact of employment tribunal fees in Great Britain on women and ethnic minorities	55
4.3 Access to justice for victims of domestic violence.....	56
4.4 The residence test for civil legal aid.....	56
Section 5: Access to higher education – Article 13, List of Issues, paragraph 30 ...	58
5.1 Children’s right to education	58
5.2 Tuition fees	59
5.3 Changes to student finance	60
5.4 Equal access to higher education	61
5.5 Disabled Students’ Allowance	64
Section 6: Health – Article 12, List of Issues, paragraphs 26 and 27	66
6.1 Access to mental health care.....	66
6.2 Neglect of adults in the social care system.....	68
6.3 Preventing deaths in detention of adults with mental health conditions	69
Annex: Equality and Human Rights Commission recommendations to improve implementation of the International Covenant on Economic, Social and Cultural Rights in the UK	71

List of acronyms

AHC – after housing costs

AtW – Access to Work programme

B&B – Bed and Breakfast

BIS – Department for Business, Skills and Innovation

BMA – British Medical Association

CAMHS – Child and Adolescent Mental Health Services

CEACR – Committee of Experts on the Application of Conventions and Recommendations

CO – Certification Officer

CRC – Convention on the Rights of the Child

CRPD – Convention on the Rights of Persons with Disabilities

DCLG – Department for Communities and Local Government

DLA – Disability Living Allowance

DWP – Department for Work and Pensions

ECHR – European Convention on Human Rights

EHRC – Equality and Human Rights Commission

ESA – Employment Support Allowance

ESCR – economic, social and cultural rights

HEIs – Higher Education Institutions

HRA – Human Rights Act 1998

ICESCR – International Covenant on Economic, Social and Cultural Rights

LASPO – Legal Aid, Sentencing and Punishment of Offenders Act 2012

MoJ – Ministry of Justice

OfS – Office for Students

OHCHR – Office of the High Commissioner for Human Rights

PIP – Personal Independence Payments

PSED – Public Sector Equality Duty

SEN – special educational needs

SDP – Severe Disability Premium

TEF – Teaching Excellence Framework

UN CEDAW – Committee on the Elimination of Discrimination against Women

UN CESCR – United Nations Committee on Economic, Social and Cultural Rights

WCA – Work Capability Assessment

WRAG – Work-Related Activity Group

WRWA – Welfare Reform and Work Act 2016

Introduction

1. This submission provides information on the implementation of the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). This is in response to some of the issues raised by the UN Committee on Economic, Social and Cultural Rights (UN CESCR) in its 'List of Issues on the United Kingdom of Great Britain and Northern Ireland' published in October 2015.¹

2. The economic crisis and the UK Government's responses to it have had a significant impact on the fulfilment of people's economic, social and cultural rights (ESCR). UN CESCR's guidelines for policy adjustments in times of economic crisis accept that States may need to take regressive measures in such situations, on condition that they are temporary, necessary, proportionate and non-discriminatory, and that they do not undercut a core minimum level of protection of ESCR.²

3. The UK Government has implemented reforms to the social security system which have had a disproportionate impact on groups covered by equality legislation, as well as on other marginalised groups that should be afforded special protection under ICESCR. The Equality and Human Rights Commission's (EHRC) analysis questions the necessity and proportionality of this programme of social security reform, and notes that there is no indication that its measures are intended to be temporary.

4. This submission should be read in conjunction with the EHRC's report 'Socio-Economic Rights in the UK: List of Issues', which was submitted to UN CESCR in August 2015.

¹ UN CESCR (2015), 'List of issues in relation to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland', E/C.12/GBR/Q/6, paragraph 4. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fQ%2f6&Lang=en [accessed: 21 April 2016].

² Pillay, A. (Chairperson, Committee on Economic, Social and Cultural Rights) (personal communication by letter 16 May 2012) CESCR/48th/SP/MAB/SW. Available at: <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf> [accessed: 21 April 2016]. While these guidelines are not binding on the UK, they are an authoritative interpretation by UN CESCR of the obligations that States Parties have under ICESCR in times of economic crisis. As such, they provide an extremely useful reference point against which to assess the UK's implementation of ICESCR since its last review.

5. The EHRC would like to highlight the following key concerns in relation to the implementation of ICESCR since the UK was last reviewed in 2009:

- **Financial decision-making:** Decision-making in spending reviews and social security reform must comply with the Public Sector Equality Duty (PSED). The UK Government's consideration of the impact of policy and legislation on potentially vulnerable groups could be strengthened and conducting cumulative impact assessments would support greater compliance with ICESCR.
- **The impact of social security reform on ESCR:** A range of the UK Government's recent social security reforms have had a disproportionate impact on disabled people, women and children. The UK Government should improve its planning and monitoring of these changes, reviewing policies and identifying mitigating actions where adverse impacts are identified.
- **Access to work and just and favourable conditions of work:** Not all groups have equal access to the labour market; young people, Muslims and disabled people have disproportionately high unemployment rates. Low pay is a key concern and the change to the national minimum wage may not adequately address this. Casualisation of employment, including zero-hours contracts, is becoming entrenched and migrant workers are particularly vulnerable to exploitation. The gender pay gap remains significant and could be improved by improving access to childcare and implementing mandatory reporting.
- **Access to civil law justice:** Restrictions in the scope of legal aid in England and Wales will have a significant impact on the ability of people to access justice when their rights under ICESCR have been breached. The way in which legal aid is administered also impedes access to justice. The UK Government should monitor the actual impact of these changes, including on potentially vulnerable groups.
- **Mental healthcare of adults:** The UK Government has yet to realise its commitment to give equal priority to mental and physical health. Both inpatient and outpatient mental health services vary widely in England. Suicide rates have increased, police detention under the Mental Health Act 1983 continues and non-natural deaths in detention could be prevented.

6. ICESCR was adopted by the UN General Assembly in December 1966, and 2016 marks the 50th anniversary of its adoption. The Office of the High Commissioner for

Human Rights (OHCHR) will be celebrating this anniversary throughout the year.³ The examination of the UK under ICESCR provides an excellent opportunity for the UK and devolved Governments to reaffirm their commitment to fulfilling the obligations set out in ICESCR and to drive forward the progressive realisation of ESCR.

Key developments since August 2015

7. This submission primarily aims to update UN CESCR on developments since the EHRC published 'Socio-economic rights in the UK: List of Issues' in August 2015. The EHRC recognises the progress that the UK and Welsh Governments have made in some areas in this timeframe, for example:

- improvements made by the UK Government's Department for Work and Pensions (DWP) to the assessments system for Personal Independence Payments, which replaced the Disability Living Allowance
- the increase proposed in the national minimum wage
- proposals made by the UK Government's Department for Business, Innovation and Skills (BIS) to improve access to higher education, and
- the Welsh Government's 2016-20 equality objectives, which include actions to tackle inequalities and promote the fulfilment of rights relating to health, employment, education and other key areas.⁴

8. The EHRC has also identified emerging challenges in the realisation of ESCR. For example, we raise concerns in relation to:

- the passage of the Welfare Reform and Work Act 2016 (WRWA) through the UK Parliament, including: inadequate assessments of the impacts that provisions may have on ESCR; the further reduction of the household benefit cap; and changes to Child Tax Credits
- the right to work and to just and favourable conditions of work, including: unequal access to work of young people, Muslims and disabled people; low pay; the

³ UN Human Rights. (2015). *High Commissioner message – Human Rights Day 2015* [Online Video]. 4 December 2015. Available at: <https://www.youtube.com/watch?v=zthfxXbi7XU&feature=youtu.be> [accessed: 21 April 2016]

⁴ Welsh Government (2016), 'Equality Objectives 2016-2020'. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/equality-objectives/?lang=en> [accessed: 21 April 2016].

restrictions on the right to freedom of association that are proposed in the Trade Union Bill; discrimination at work, such as on the basis of pregnancy and maternity and persistent pay gaps, and

- UK Government reforms to the higher education system in England, which include increases in tuition fees, changes to tuition financing and the reduction of support to disabled students delivered through the Disabled Students' Allowance.

9. This report also presents additional evidence in relation to issues raised in UN CESCR's List of Issues, which was not available to the EHRC when it published 'Socio-economic rights in the UK: List of Issues' in August 2015. This includes evidence drawn from 'Is Britain Fairer?', the EHRC's statutory five-yearly report that provides a comprehensive review of equality and human rights progress in England, Scotland and Wales between 2007/08 and 2012/13, and 'Is Wales Fairer?', which focuses specifically on Wales.⁵

10. Where new information is presented, the EHRC has updated the recommendations in 'Socio-economic rights in the UK: List of Issues'. The final set of recommendations is included as an appendix to this report and serves as a concise statement of the EHRC's priority issues in relation to the implementation of ESCR in the UK since the State Party was last reviewed by UN CESCR in 2009.

The role of the EHRC

11. The EHRC was established by the UK Parliament through the Equality Act 2006 as an independent body with a mandate covering equality and human rights. Among other human rights responsibilities, the EHRC is responsible for 'encouraging good practice in relation to human rights.'⁶

12. The UK Parliament has also given the EHRC responsibilities to assess and report on the UK's progress in realising the human rights in the treaties it has

⁵ EHRC (2015) 'Is Britain Fairer?' Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer-0> [accessed: 21 April 2016] and EHRC (2016) 'Is Wales Fairer?' Available at: <http://www.equalityhumanrights.com/publication/wales-fairer> [accessed: 21 April 2016].

⁶ Section 9(1)(b) of the Equality Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9> [accessed: 21 April 2016].

ratified.⁷ The EHRC works with other National Human Rights Institutions (NHRIs) in the UK and liaises with government departments and agencies to fulfil this role.

Devolution and the scope of this submission

13. The National Assembly for Wales was established by the Government of Wales Act 1998.⁸ In a referendum in 2011, the people of Wales voted in favour of granting the Assembly further powers for legislating in Wales without first needing the agreement of the UK Parliament.⁹ The devolved areas include culture, economic development, education and training, health, housing and local government.¹⁰

14. The Scottish Parliament was created by the Scotland Act 1998¹¹ and its powers were extended by the Scotland Act 2012.¹² Matters devolved to the Scottish Parliament include justice and policing, health and social housing, local government, education and training, as well as many aspects of transport and environment.

15. This submission aims to cover England and Wales for all thematic areas and Scotland for issues which are reserved to the UK Parliament, although in some cases, statistics and evidence for the UK or Great Britain are presented. The submission of the Scottish Human Rights Commission will cover Scotland in more detail and the submission of the Northern Ireland Human Rights Commission will cover Northern Ireland, for which the EHRC does not have a mandate. Therefore, the specific recommendations in this submission are addressed to the UK Government, with separate recommendations addressed to the Welsh Government. However, they may also be relevant to the other devolved administrations. The

⁷ Section 9(2) of the Equality Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9> [accessed: 21 April 2016].

⁸ Government of Wales Act 1998. Available at: <http://www.legislation.gov.uk/ukpga/1998/38/contents> [accessed: 21 April 2016].

⁹ National Assembly for Wales, Media Pack. Available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx> [accessed: 21 April 2016].

¹⁰ National Assembly for Wales. 2016. *The National Assembly for Wales Media Pack*. [ONLINE]. Available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx> [accessed: 21 April 2016].

¹¹ Scotland Act 1998. Available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents> [accessed: 21 April 2016].

¹² Scotland Act 2012. Available at: <http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted> [accessed: 21 April 2016].

EHRC expects all of the UK's Governments to work together to progressively realise the rights set out in ICESCR.

Section 1: Enhancing the status of ICESCR in domestic law – Article 2 and List of Issues paragraph 1

1.1 ICESCR in domestic law and policy in the UK

16. The UK Government has not directly incorporated ICESCR into domestic law, so that neither its general principles nor its substantive provisions can be enforced by domestic courts. The UK Government has not signed or ratified the Optional Protocol to ICESCR, which would allow individuals or groups to bring complaints to UN CESCR. Similarly, the UK has signed and ratified the European Social Charter - the Council of Europe treaty on socio-economic rights - but has not ratified the Additional Protocol providing for a system of collective complaints.

17. Many of the rights in ICESCR are given at least partial effect through national legislation, for example those in relation to employment, access to healthcare, and education. The EHRC has also identified UK legislation that has not progressed the realisation of ESCR, for example the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). This reduced the scope of legal aid for individuals bringing claims in relation to housing, family law and social security issues.

18. The EHRC has noted that UK Government analyses of the impact of recent legislative proposals on ESCR could have been strengthened in a number of ways. The DWP's human rights memorandum for the Welfare Reform and Work Bill focused on the right to work, without considering the potential adverse impacts on people's rights under Articles 9 and 11 ICESCR to social security and an adequate standard of living (see pp. 15-16). Similarly, the human rights memorandum produced by BIS to accompany the Trade Union Bill does not consider how it may impact on the UK's obligations under Article 8 ICESCR in relation to freedom of association (see pp. 49-52). UK Government impact assessments related to budgetary measures rarely make any reference to the effect of proposed measures

on the implementation of ESCR, for example the changes proposed to higher education funding arrangements (see pp. 59-60).

1.2 A British Bill of Rights and socio-economic rights

19. The UK Government has committed to bringing forward proposals on a Bill of Rights.¹³ While the EHRC has welcomed a debate on this, we would not support a reversal of the leading global role Britain has long played in protecting and promoting human rights, nor a reduction in the protections of rights that we all currently enjoy under the Human Rights Act 1998 (HRA). We believe the HRA is well crafted and reflects and is embedded in the constitutional arrangements for the UK. In particular, it maintains parliamentary sovereignty and a primary role for domestic courts in the interpretation of the European Convention on Human Rights (ECHR). The HRA has also led to greater quality and accountability in public service delivery. Moreover, it is central to the arrangements for devolution in Northern Ireland, Wales and Scotland.

20. In addition, we have noted that 'any changes might offer an opportunity to consider the case for bringing additional rights (such as those protected by UN treaties) into our laws, or for strengthening arrangements for the enforcement of current rights.'¹⁴ We consider that a public consultation on a Bill of Rights could provide an opportunity for considering options for better protection of ESCR in the UK. This consultation should seek the views of those groups identified in this submission as not having equal access to ESCR, or those groups disproportionately affected by changes to legislation and UK Government policy, such as women, children and disabled people.

1.3 Enhancing the status of ICESCR in domestic law

21. Section 1 of the Equality Act 2010 sets out the duty of certain public authorities to have due regard to the desirability of reducing socio-economic disadvantage when

¹³ Cabinet Office and Prime Minister's Office (2015), 'Queen's Speech 2015', p. 75. Available at: <https://www.gov.uk/government/publications/queens-speech-2015-background-briefing-notes> [accessed: 21 April 2016].

¹⁴ EHRC (2015), Letter to the Joint Committee on Human Rights, CEXEC/MF/351francis. Available at: <http://www.equalityhumanrights.com/en/human-rights/current-human-rights-debates> [accessed: 21 April 2016].

taking strategic decisions about how to exercise their functions. This section has not been brought into force, but could provide a model for enhancing the status of ICESCR in domestic law. The EHRC has raised concerns that the duty has not been commenced in Great Britain. We have also supported a UK Government amendment to the Scotland Bill which enables Scottish Ministers to commence the duty in respect of Scottish public bodies at a time of their choosing.¹⁵ The independent advisor on poverty and inequality to the Scottish Government has recommended that Ministers do this as soon as is practicable.¹⁶ The EHRC has also supported the proposal in the Wales Bill to devolve powers to commence the socio-economic duty in relation to Welsh public bodies to the National Assembly for Wales.¹⁷

22. Many of the concerns raised in this submission – such as proposed changes to child poverty measurements, the impact of social security reforms on disabled people's rights, and changes to student finance which may impact on equal access to higher education – may not have been proposed or implemented if decision-makers had paid due regard to the desirability of reducing socio-economic disadvantage when exercising their functions.

23. In 'Children's rights in the UK', the EHRC highlighted mechanisms which have enhanced the status of the Convention of the Rights of the Child (CRC) in domestic law, as well as specific mechanisms that exist in the legal frameworks of Scotland and Wales. For example:

- in non-binding Cabinet Office guidelines, the UK Government has committed to give due consideration to the CRC when developing new policy or legislation¹⁸
- the Rights of Children and Young Persons (Wales) Measure 2011 placed a duty on all Welsh Ministers to have due regard to the CRC when exercising their functions¹⁹, and

¹⁵ EHRC, Briefing on the Scotland Bill, House of Commons Report Stage, 09/11/15. Available at: <http://www.equalityhumanrights.com/en/file/12581/download?token=ZCWn49v0> [accessed: 21 April 2016].

¹⁶ Independent Advisor on Poverty and Inequality (2016), 'Shifting the Curve: A Report to the First Minister, p. 24, Available at: <http://www.gov.scot/Publications/2016/01/1984/downloads> [accessed: 21 April 2016].

¹⁷ EHRC (2015), Submission to the Welsh Affairs Committee's scrutiny of the Draft Wales Bill, 25/11/2015. Available at: http://www.equalityhumanrights.com/en/file/12596/download?token=D9_tJB0V [accessed: 21 April 2016].

¹⁸ Cabinet Office (2015), 'Guide to making legislation', paragraph 12.29. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328408/Guide_to_Making_Legislation_July_2014.pdf [accessed: 21 April 2016].

- the Children and Young People (Scotland) Act 2014 sets out a duty for Scottish Ministers to keep under consideration whether they could take steps to further children's rights as set out in the CRC.²⁰

24. While the EHRC recommends an enhancement of the CRC in UK legislation and policy which goes beyond the mechanisms that exist in Scotland and Wales, experiences of the implementation of these measures may nevertheless provide useful guidance on enhancing the status of ICESCR, particularly as the CRC contains a number of ESCR in relation to children.

¹⁹ Available at: <http://www.legislation.gov.uk/mwa/2011/2/contents> [accessed: 21 April 2016]. For information on the measure, see: <http://gov.wales/topics/people-and-communities/people/children-and-young-people/rights/uncrc/?lang=en> [accessed: 21 April 2016].

²⁰ The Children and Young People (Scotland) Act 2014 Sections 1 and 2. Available at: <http://www.legislation.gov.uk/asp/2014/8/contents/enacted> [accessed: 21 April 2016].

Section 2: Adequate standard of living and social security – Articles 9 and 11

2.1 Welfare Reform and Work Act in the UK – List of Issues, paragraphs 4 and 15

25. The WRWA gained Royal Assent on 16 March 2016. The measures addressed below apply to England, Scotland and Wales. The UK Government's response to UN CESCR's List of Issues fails to consider any of the specific measures in the Act, nor address any of the concerns mentioned below.²¹

2.1.1 Impact assessments

26. In 'Socio-economic rights in the UK: List of Issues' the EHRC set out its view that if the UK Government's financial decision-making process was compliant with the PSED²², any decisions would be more likely to be consistent with the UK's obligations under ICESCR.²³

27. On 16 September 2015, the EHRC wrote to the Secretary of State for Work and Pensions to set out its concerns with the impact assessments for the Welfare Reform and Work Bill before it became an Act of Parliament.²⁴ The Secretary of State's response of 13 October 2015 stated that the impact assessments 'use the most

²¹ UK State response to UN CESCR's List of Issues, April 2016, para. 64. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fQ%2f6%2fAdd.1&Lang=en [accessed: 21 April 2016].

²² A statutory duty on all public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. This includes considering the need to minimise disadvantages suffered by persons who share protected characteristics and taking steps to meet their needs (Section 149 of the Equality Act 2010).

²³ EHRC (2015), 'Socio-economic rights in the UK: List of Issues' paragraph 19. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

²⁴ Iain Duncan Smith (personal communication by letter to EHRC, 13 October 2015) Available at: http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Parli_Briefings/2015-10-13%20SoS%20to%20R%20Hilsenrath%20-%20EHRC.PDF [accessed: 21 April 2016].

robust analysis available to give a good assessment of both the rationale for and the impacts of the reforms.²⁵ Notwithstanding this response, the EHRC considers that the impact assessments²⁶ could have been strengthened in a number of ways to improve compliance with the PSED and implementation of Articles 2, 9 and 11 of ICESCR. In particular, the DWP could have strengthened its equality and human rights impact assessments by:

- demonstrating that the potentially regressive policy adjustments in the WRWA meet the standards set by UN CESCR in that they are temporary, necessary, proportionate and non-discriminatory, and that they do not undercut a core minimum level of protection²⁷
- considering the impact of the WRWA on the rights to social security and adequate standard of living, rather than focusing solely on work as 'the best route out of poverty'²⁸
- assessing the impact of the WRWA on people who share protected characteristics under the Equality Act 2010
- looking at alternative policy options to mitigate any adverse impacts identified, and
- addressing the impact of measures on children.²⁹

2.1.2 Changes to UK Government duties on child poverty

28. In the EHRC's recent submission to the UN Committee on the Rights of the Child, we noted that the WRWA repealed the UK-wide targets set out in the Child

²⁵ Ibid.

²⁶ DWP, Equality impact assessments for the Welfare Reform and Work Bill, July and September 2015. Available at: <http://services.parliament.uk/bills/2015-16/welfare-reform-and-work/documents.html> [accessed: 21 April 2016]. See also: DWP (2015), Memorandum to the Joint Committee on Human Rights: The Welfare Reform and Work Bill 2015. Available at: <https://www.gov.uk/government/publications/welfare-reform-and-work-bill-2015-human-rights-memorandum> [accessed: 21 April 2016].

²⁷ Pillay, A. (Chairperson, Committee on Economic, Social and Cultural Rights) (personal communication by letter 16 May 2012) CESCR/48th/SP/MAB/SW. Available at: <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf> [accessed: 21 April 2016].

²⁸ DWP (2015), Memorandum to the Joint Committee on Human Rights: The Welfare Reform and Work Bill 2015, paragraph 4. Available at: <https://www.gov.uk/government/publications/welfare-reform-and-work-bill-2015-human-rights-memorandum> [accessed: 21 April 2016].

²⁹ EHRC (personal communication 16 September 2015 to Iain Duncan Smith). Available at: http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Parli_Briefings/276Duncan_Smith.pdf [accessed: 21 April 2016].

Poverty Act 2010 for the reduction of child poverty.³⁰ The UK Government response to UN CESCR's List of Issues on combating poverty fails to mention the removal of the targets.³¹ These can provide a useful focus for UK Government actions to address the issue of child poverty and serve as an accountability mechanism. The submission also highlighted the repeal of the duty on the Secretary of State and local authorities to publish child poverty strategies.

2.1.3 Reduction in household benefit cap

29. In 'Socio-economic rights in the UK: List of Issues', the EHRC highlighted the impact of the current household benefit cap on women.³² In 'Children's rights in the UK', we highlighted the impact of the cap on children, as well as a recent Supreme Court case in which three of five judges raised concerns about the failure of the Secretary of State to take the best interests of the child as a primary consideration in his decision to implement this cap.³³

30. Section 96 of the Welfare Reform Act 2012, as amended by Section 8 of the WRWA, further reduces the upper annual limit of benefits for people in these households in Greater London to £23,000 and for those outside Greater London to £20,000. The cap applies to all households in England, Scotland and Wales which receive housing benefit or Universal Credit and whose entitlement to prescribed benefits exceeds the amounts specified, regardless of their needs.

31. In its impact assessment, DWP noted that 90,000 additional families would be affected by the further reduction.³⁴ DWP has recognised that the measure may have a greater impact on women and on large families, but has argued that it is justified to

³⁰ EHRC (2016), 'Updated submission: Children's Rights in the UK', heading 4.2.3.

³¹ UK State Response to UN CESCR's List of Issues (2016), paragraph 87.

³² EHRC (2015), 'Socio-economic rights in the UK: List of Issues', paragraphs 46-47. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

³³ EHRC (2015), 'Children's rights in the UK', paragraphs 77-79. The Supreme Court case referred to is: *R (on the application of SG and others (previously JS and others)) (Appellants) v Secretary of State for Work and Pensions (Respondent)* [2015] UKSC 16, judgement of 18/03/2015. Available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf [accessed: 21 April 2016].

³⁴ DWP (2015), Welfare Reform and Work Bill: Impact Assessment for the benefit cap, p. 2. Available at: <http://www.parliament.uk/documents/impact-assessments/IA15-006.pdf> [accessed: 21 April 2016].

achieve the legitimate aim of reducing the economic deficit, increasing fairness between working and non-working households, and increasing work incentives.³⁵

32. The EHRC considers the impact assessments for this further reduction could have been strengthened in a number of ways. When the reduced cap is implemented, the UK Government may not be able to take policy actions that could mitigate any adverse impacts to the rights to social security and an adequate standard of living.

2.1.4 Changes to Child Tax Credits and child element of Universal Credit

33. In 'Children's rights in the UK', the EHRC highlighted recent changes to the Tax Credits Act 2002 and the Welfare Reform Act 2012. The changes limit entitlement to Child Tax Credits or the child element of Universal Credit to the first two children in a household.³⁶ These changes may impact on the living standards of poor families with more than two children, and therefore would constitute a regressive measure in relation to the implementation of Articles 9 and 11 ICESCR.

34. The EHRC highlighted the potential disproportionate impact of the measures on families who hold a particular religion or belief.³⁷ Data from the Office of National Statistics demonstrates that some ethnic groups with a particular religion or belief have larger families than others.³⁸ The DWP recognises that ethnic minority households may be more likely to be impacted by these changes, but does not set out any actions to mitigate this.³⁹

³⁵ DWP (2015), Memorandum to the Joint Committee on Human Rights: The Welfare Reform and Work Bill 2015, paragraphs 19, 20, 22 4. Available at: <https://www.gov.uk/government/publications/welfare-reform-and-work-bill-2015-human-rights-memorandum> [accessed: 21 April 2016].

³⁶ Section 9 of the Tax Credits Act 2002, as amended by Section 13 WRWA, and Section 10 of the Welfare Reform Act 2012, as amended by Section 14 of the WRWA.

³⁷ EHRC (2015), Parliamentary Briefing, Welfare Reform and Work Bill, Committee Stage: Clauses 11 and 12, House of Lords, 07/12/2015. Available at: <http://www.equalityhumanrights.com/en/node/1131> [accessed: 21 April 2016].

³⁸ Office of National Statistics (2015), Data Table CT0546 - Religion by number of dependent children in family. Available at: <http://www.ons.gov.uk/ons/about-ons/business-transparency/freedom-of-information/what-can-i-request/published-ad-hoc-data/census/ethnicity/ct0546-2011-census.xls> [accessed: 21 April 2016].

³⁹ DWP (2015), Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element, paragraph 31. Available at: <http://www.parliament.uk/documents/impact-assessments/IA15-006E.pdf> [accessed: 21 April 2016].

2.2 Changes to tax credits: List of Issues, paragraphs 4 and 15

35. Through recent legislation,⁴⁰ the UK Government proposed significant changes to the regime of tax credits which provide support to lower income families with children and families in low-paid work.⁴¹ These changes would have reduced public expenditure by around £4.4 billion in 2016/17 and may have had an adverse impact on the standard of living of 3.3 million families, including 5.2 million children.⁴² The proposed measures were criticised by the UK Parliament's Work and Pensions Committee and others.⁴³ The measures were rejected by the House of Lords⁴⁴ and the Chancellor subsequently announced that changes to tax credits set out in the Regulations would not be implemented.⁴⁵

36. The EHRC welcomes this announcement, but remains concerned that further reductions to social security entitlements may impact disproportionately on potentially vulnerable groups, and may constitute regressive measures in relation to Articles 2, 9 and 11 of ICESCR. It will be important to monitor further potential cost-saving changes. In particular, the Centre for Social Justice has emphasised that the UK Government may seek to mitigate the costs of tax credits by reducing the budget for Universal Credit.⁴⁶ The UK Parliament's Public Accounts Committee highlighted that 'the Universal Credit business case has not been updated to take account of the

⁴⁰ Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015. Available at: <http://www.legislation.gov.uk/ukdsi/2015/9780111138946> [accessed: 21 April 2016].

⁴¹ Work and Pensions Committee (2015), A reconsideration of tax credit cuts, p. 4. Available at: <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmworpen/548/54802.htm> [accessed: 21 April 2016].

⁴² Ibid., p. 6.

⁴³ Ibid., p. 16. See also: Resolution Foundation (2015), Higher Ground: who gains from the national living wage? Available at: <http://resolutionfoundation.org/publications/higher-ground-who-gains-from-the-national-living-wage/> [accessed: 21 April 2016] and Institute for Fiscal Studies (2015), An assessment of the potential compensation provided by the new 'National Living Wage' for the personal tax and benefit measures announced for implementation in the current parliament. Available at: <http://www.ifs.org.uk/uploads/publications/bns/BN175.pdf> [accessed: 21 April 2016].

⁴⁴ House of Commons Library (2015), Briefing Paper 7290: Background to the 2015 spending review and autumn statement. Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7290> [accessed: 21 April 2016].

⁴⁵ HM Treasury. 2015. Spending Review and Autumn Statement 2015: key announcements. [ONLINE]. Available at: <https://www.gov.uk/government/news/spending-review-and-autumn-statement-2015-key-announcements> [accessed: 21 April 2016].

⁴⁶ Centre for Social Justice (2015), Reforming tax credits. Available at: <http://centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/Reforming-Tax-Credits-full-report.pdf> [accessed: 21 April 2016].

significant changes to tax credits made in the recent Spending Review and Autumn Statement.⁴⁷

2.3 Devolution of certain social security matters through the Scotland Act

37. The Scotland Act, which received Royal Assent on 23 March⁴⁸, will devolve significant new welfare powers, representing approximately 17 per cent (£2.6 billion) of currently reserved welfare spend.⁴⁹ The new social security powers will cover most disability and carers' benefits, the housing element of Universal Credit and certain administrative arrangements for it (such as the frequency of payments), as well as new powers to make discretionary top-up payments.⁵⁰

2.4 Impact of social security reforms on disabled people in the UK – List of Issues, paras 4 and 15

38. 'Socio-Economic Rights in the UK: List of Issues' set out a number of the social security reforms since 2010 which had a particular impact on disabled people including:

- the transition from the Disability Living Allowance (DLA) to Personal Independence Payments (PIP)
- the under-occupation deduction to housing benefit, and

⁴⁷ House of Commons Committee of Public Accounts (2016), Nineteenth report of session 2015/16: Universal Credit: progress update, HC 601, 03/02/16. Available at: <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpubacc/601/60102.htm> [accessed: 21 April 2016].

⁴⁸ See: <http://services.parliament.uk/bills/2015-16/scotland.html> [accessed: 21 April 2016].

⁴⁹ The Scottish Parliament (2015), Devolution (Further Powers) Committee guide to Scottish Devolution, pp. 9-10. Available at: http://www.scottish.parliament.uk/WebSPEIRResources/2015.11.10_Citizens_Guide_Draft_FINAL.pdf [accessed: 21 April 2016].

⁵⁰ Ibid.

- changes to assessments for Employment Support Allowance (ESA) and the closure of the Independent Living Fund.⁵¹

39. This updated submission focuses on developments in relation to social security reform since August 2015.

2.4.1 Universal Credit

40. Universal Credit replaces a number of benefits that were previously paid separately, with the aim of enabling families to become more independent and simplifying the benefits system. Its implementation has begun and is due to be completed in April 2016.⁵² In 'Socio-economic rights in the UK: List of Issues', the EHRC focused on the impact that Universal Credit could have on women.⁵³ Since then, we have conducted further analysis and have emphasised the following issues in relation to its potential impact on disabled people:

- The level of financial support to families with a disabled child who are in receipt of DLA has been reduced by 50%.⁵⁴ The UK Government estimates that the change will affect around 100,000 disabled children.⁵⁵
- The Severe Disability Premium (SDP), which is paid to severely disabled adults who live on their own or with dependent children, is being abolished as part of the introduction of Universal Credit.⁵⁶ Around 230,000 disabled adults and 25,000 single parents received SDP in 2012.⁵⁷

⁵¹ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', pp. 14-19. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

⁵² EHRC (2015), 'Socio-economic rights in the UK: List of Issues', p. 21. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

⁵³ *Ibid.*, p. 21.

⁵⁴ House of Commons Work and Pensions Select Committee (2012), Universal Credit implementation: meeting the needs of vulnerable claimants, Part 4: Universal Credit Entitlement. Available at: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/576/57602.htm> [accessed: 21 April 2016].

⁵⁵ The Children's Society, Citizens Advice Bureau and Disability Rights UK (2012), Holes in the safety net: the impact of Universal Credit on disabled people and their families. Available at: https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/holes-in-the-safety-net-final-copy.pdf [accessed: 21 April 2016].

⁵⁶ House of Commons Work and Pensions Select Committee (2012), Universal Credit implementation: meeting the needs of vulnerable claimants, Part 4, paragraph 108. See note 78.

⁵⁷ The Children's Society, Citizens Advice Bureau and Disability Rights UK (2012), Holes in the safety net: the impact of Universal Credit on disabled people and their families, p. 8. Available at:

- The disability element of the Working Tax Credit, which recognises that many disabled people have a reduced earning potential and helps them to meet the extra costs of working, will not form part of Universal Credit.⁵⁸
- When disabled people in work are moved onto Universal Credit, they are likely to have about £40 per week less in financial support. This loss in support could make it harder for them to stay in work due to higher costs and could also lead to increased debt.⁵⁹
- Parents of children entitled to the DLA are not exempt from the under-occupation deduction to housing benefit.⁶⁰

41. The EHRC is concerned that the social security reforms brought about by the introduction of Universal Credit may constitute regressive measures by reducing the social security protection for disabled people. This may also impact adversely on their right to an adequate standard of living. In line with UN CESCR's guidelines for policy adjustments in times of economic crisis, the UK Government should be able to demonstrate that they are temporary, necessary, proportionate and non-discriminatory, and that they do not undercut a core minimum level of protection of ESCR.⁶¹

2.4.2 Household benefit cap impact on disabled people's carers

42. The household benefit cap could potentially have a significant and adverse impact upon severely disabled people. In *Hurley and Others v Secretary of State for*

https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/holes-in-the-safety-net-final-copy.pdf [accessed: 21 April 2016].

⁵⁸ House of Commons Work and Pensions Select Committee (2012), Universal Credit implementation: meeting the needs of vulnerable claimants. See note 79.

⁵⁹ The Children's Society, Citizens Advice Bureau and Disability Rights UK (2012), Holes in the safety net: the impact of Universal Credit on disabled people and their families, p. 15. See note 80.

⁶⁰ SSAC, Universal credit: priorities for action, p. 28. The under-occupation deduction to housing benefit is a reduction in the amount paid to claimants if they live in social housing that is deemed to be too large for their needs. The reduction has a disproportionate impact on disabled people. See: EHRC (2015), 'Socio-economic rights in the UK: List of Issues', pp. 16-18. Available at: <http://www.equalityhumanrights.com/en/sites/default/files/uploads/documents/humanrights/UN/ICESCR%20-%20FINAL%2014-08-15%20%282%29.pdf> [accessed: 21 April 2016].

⁶¹ Pillay, A. (Chairperson, Committee on Economic, Social and Cultural Rights) (personal communication by letter 16 May 2012) CESCR/48th/SP/MAB/SW. Available at: <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf> [accessed: 21 April 2016]. While these guidelines are not binding on the UK, they are an authoritative interpretation by CESCR of the obligations that States Parties have under ICESCR in times of economic crisis. As such, they provide an extremely useful reference point against which to assess the UK's implementation of ICESCR since its last review.

Work and Pensions [2015], in which the EHRC intervened, the High Court ruled that the failure to exempt at least individual family carers from the household benefit cap was unlawful.⁶² Part 8A of the Housing Benefit Regulations 2006 ('the Regulations') applies the cap to recipients of the Carer's Allowance providing care for adult individuals who are not their partners. The claimants in this case demonstrated that being subjected to the benefit cap caused them hardship and adversely affected their right to an adequate standard of living.

43. The High Court ruled that the Regulations produced an indirectly discriminatory effect on disabled people and therefore were in breach of Article 8 (family life) in conjunction with Article 14 (non-discrimination) of the European Convention on Human Rights. The measure was not considered to be proportionate as it was found to be manifestly without reasonable foundation. The UK Government had not considered the discriminatory effect on disabled people of the loss of their family carers in impact assessments for the Regulations, nor was this put before the UK Parliament.

44. Following this ruling, the UK Government announced that it will be exempting all recipients of Carer's Allowance from the benefit cap.⁶³ This will take effect once Regulations are brought forward later in 2016. The EHRC welcomes this announcement as the exemption will reduce the likelihood that the household benefit cap will have a disproportionate impact on disabled people who are cared for by carers who are not their partners.

2.4.3 Analysis of DWP's review of PIP

45. In 'Socio-economic rights in the UK: List of Issues', the EHRC highlighted the impacts on disabled people of the transition from the DLA to PIP. In particular, we highlighted:

- that around 600,000 fewer people would receive PIP than DLA
- backlogs in PIP assessment and claims, and

⁶² [2015] EWHC3382 (Admin).

⁶³ House of Lords, Hansard Text, Clause 7: Benefit Cap, Amendment 24, column 1094, per. Lord Freud, 25/01/16. Available at: <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160125-0002.htm#16012522000165> [accessed: 21 April 2016].

- the difficulty of assessing the proportionality of the measure without a robust evaluation strategy to accompany the implementation of PIP.⁶⁴

46. DWP published its second response to the independent review of the PIP assessment in November 2015.⁶⁵ The EHRC welcomes the UK Government's full acceptance of most of the medium and long-term recommendations made by the independent reviewer and the actions that DWP have taken to implement them. There have been various actions taken to improve the claimant experience through reviewing communications products and messages, making decision letters clearer, providing training and guidance for case managers, and setting up the PIP digital claim system as an alternative to the paper claim process. The EHRC welcomes the commitment of DWP to continuing 'to work with disability organisations to ensure [PIP] products are accessible...'⁶⁶

47. DWP did not, however, accept in Recommendation 13, to design and implement a rigorous evaluation strategy, in full. The reviewer recommended that the strategy should focus on the effectiveness of PIP assessments for people with mental health conditions or learning disabilities.⁶⁷ In its response, the UK Government stated that it would develop an appropriate evaluation plan 'as PIP rolls out and the evidence base builds'.⁶⁸

48. It is difficult to assess the overall impact of the new system without a holistic evaluation strategy, and DWP's proposal may not be sufficient to address fully and pre-emptively any adverse impacts on ESCR that could occur as the result of the transition from DLA to PIP. As set out in 'Socio-economic rights in the UK: List of Issues', the absence of an evaluation strategy also makes it more difficult to measure the proportionality of the potentially regressive measure. The absence of a timeline for this action plan is a concern, as is the lack of focus on the effectiveness of the PIP assessments for claimants with a mental health condition or a learning disability.

⁶⁴ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', pp. 14-16. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

⁶⁵ DWP (2015), Second response to the independent review of the Personal Independence Payment assessment. Available at: <https://www.gov.uk/government/publications/personal-independence-payment-pip-assessments-first-independent-review-second-government-response> [accessed: 21 April 2016].

⁶⁶ Ibid., p. 14.

⁶⁷ Ibid., p. 21.

⁶⁸ Ibid., p. 21.

2.4.4 Employment and Support Allowance

49. In 'Socio-economic rights in the UK: List of Issues', the EHRC assessed the effectiveness of the Work Capability Assessment (WCA), which considers people's eligibility for receiving ESA, the main benefit for people who are unable to work because of illness or disability.⁶⁹ Since the publication of this report, we have conducted analysis of this entitlement as part of monitoring the UK's compliance with the Convention on the Rights of Persons with Disabilities (CRPD).

50. Levels of ESA depend in part on whether a claimant is placed in the 'support group' or the Work-Related Activity Group (WRAG), made up of people who may be expected to take part in interviews, training or work experience. As of November 2014, the WRAG contained around 492,000 people.⁷⁰ Recent changes to the Welfare Reform Act 2007 introduced through the WRWA will reduce the level of ESA available to future claimants in the WRAG and its equivalent in relation to Universal Credit.⁷¹ The reduction will bring the rate in line with the Jobseeker's Allowance, that is, by nearly £30 per week.

51. In a parliamentary briefing during the legislative process, the EHRC argued this would cause unnecessary hardship and anxiety to people who have been independently assessed and found to have limited capability for work.⁷² In November 2014, nearly half of the people in the WRAG were suffering from mental and behavioural conditions.⁷³

52. The impact assessment by the UK Government makes very little attempt to set out comprehensively how the three aims of the PSED have been considered, in particular on how the proposals are likely to impact on people with different protected

⁶⁹ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', p. 18. Available at: <http://www.equalityhumanrights.com/en/sites/default/files/uploads/documents/humanrights/UN/ICESCR%20-%20FINAL%2014-08-15%20%282%29.pdf> [accessed: 21 April 2016].

⁷⁰ House of Commons Library (2015), Briefing Paper 07252: Welfare Reform and Work Bill, p. 83. Available at: <http://researchbriefings.files.parliament.uk/documents/CBP-7252/CBP-7252.pdf> [accessed: 21 April 2016].

⁷¹ Section 15 of the Welfare Reform and Work Act 2016. Available at: <http://www.legislation.gov.uk/ukpga/2016/7/contents/enacted/data.htm> [accessed: 21 April 2016].

⁷² EHRC (2015), Parliamentary Briefing, Welfare Reform and Work Bill, Committee Stage: Clauses 13-15, House of Lords, 09/12/15. Available at: <http://www.equalityhumanrights.com/en/file/13101/download?token=JQsmj-zJ> [accessed: 21 April 2016].

⁷³ House of Commons Library (2015), Briefing Paper 07252: Welfare Reform and Work Bill, p. 83. Available at: [file:///C:/Users/agrant/Downloads/CBP-7252%20\(2\).pdf](file:///C:/Users/agrant/Downloads/CBP-7252%20(2).pdf) [accessed: 21 April 2016].

characteristics.⁷⁴ Although the impact on disabled people is recognised, there is no attempt to break the limited data down to understand how the proposals will affect people with different forms of disability. The UK Government impact assessment suggests that people whose ESA has been reduced could recoup their losses by working 4-5 hours per week.⁷⁵ This fails to recognise the significant barriers that disabled people face in access to work (see paragraph 80).

2.5 Income poverty of adults in the UK – List of Issues, paragraph 21

53. In 'Socio-economic rights in the UK: List of Issues' the EHRC reported on relative poverty rates, noting there had been a fall in relative poverty after housing costs (AHC) since 2007/08. We also noted that families headed by someone from an ethnic minority were considerably more likely to live in poverty than those headed by a White person.⁷⁶ Families where at least one member is disabled were also more likely to live in relative and absolute poverty compared with families without a disabled member. In 2013/14, 27 per cent of families with a disabled member were living in relative poverty AHC (5.1 million people), compared with 19 per cent of families without a disabled member. Thirty per cent of families with a disabled member (5.6 million people) were living in absolute poverty AHC, compared with 20 per cent of families without a disabled member.⁷⁷

⁷⁴ EHRC (2016), Letter to Roger Godsiff MP regarding ESA WRAG proposals in the Welfare Reform and Work Bill, 23/02/16. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/parliamentary/Godsiff%20ESA%20letter%20Feb2016.pdf> [accessed: 21 April 2016].

⁷⁵ DWP (2015), Welfare Reform and Work Bill: Impact Assessment to remove the ESA Work-Related Activity Component and the UC Limited Capability for Work Element for new claims. Available at: <http://www.parliament.uk/documents/impact-assessments/IA15-006B.pdf> [accessed: 21 April 2016].

⁷⁶ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', pp. 24-25. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

⁷⁷ DWP (2015), Households Below Average Income. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf [accessed: 21 April 2016]. HBAI notes that disability is self-reported in the survey and that many of those identifying as disabled will not be in receipt of the main disability benefits and may not be eligible for them.

2.6 Housing in England and Wales – List of Issues, paragraphs 23, 24 and 25

54. In 'Socio-economic rights in the UK: List of Issues', the EHRC highlighted:

- reductions in the overall proportion of people who live in substandard housing, but higher proportions of ethnic minority households living in substandard housing
- the disproportionate numbers of young people aged 16-24 and people from ethnic minorities living in overcrowded housing
- the shortfall in site provision for Gypsies and Travellers and the proposal to restrict the definition of Gypsies and Travellers in the planning system in England, and
- housing for women and children who seek refuge from domestic violence, including concerns over funding and data collection.

2.6.1 Homelessness in England

55. Housing and homelessness are devolved matters, though they can be affected by issues reserved to the UK Parliament, such as social security. The 2016 homelessness monitor for England highlighted: the increased number of rough sleepers; the rise in homeless placements in temporary accommodation; and the reports of two-thirds of local authorities in England that welfare reforms have increased homelessness in their area.⁷⁸ The number of 'local authority homelessness case actions' was 34 per cent higher than in 2009/10.⁷⁹ Analysis based on the latest rough sleeping figures released by the Department for Communities and Local Government (DCLG) shows that rough sleeping in England is up by 102 per cent in 2015 compared with 2010 (from 1,768 people sleeping rough in 2010 to 3,569 in 2015).⁸⁰

⁷⁸ Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S. and Watts, B. (2015), The homelessness monitor: England 2016, pp.8-10. Available at: <http://www.crisis.org.uk/publications-search.php?fullitem=486> [accessed: 21 April 2016]. The homelessness monitor 2011-16 is a five-year programme of work commissioned and funded by Crisis and the Joseph Rowntree Foundation, carried out by a team of academics.

⁷⁹ Ibid., p.8.

⁸⁰ Homeless Link. 2015. *Rough sleeping: our analysis*. [ONLINE]. Available at: <http://www.homeless.org.uk/facts/homelessness-in-numbers/rough-sleeping/rough-sleeping-our-analysis> [accessed: 21 April 2016].

56. The EHRC acknowledges that UK Government initiatives mentioned in the UK's state report⁸¹ are likely to have moderated the upward trend in homelessness. However, the majority of those who have been accepted as statutorily homeless in the last four years have come from the private rented sector.⁸² The housing system is thought to be contributing to the increase and the shortfall in house building compared with the rising number of households is a key factor.

57. The UK Statistics Authority has recently reported that the production and presentation of data produced by the DCLG on homelessness and rough sleeping in England could be improved, and that the statistics have not kept pace with changing national and local policy needs.⁸³ The EHRC welcomes this assessment and the improvement in data which should result.

58. A recent report on homelessness and benefit sanctions in England and Scotland found that homelessness service users were disproportionately affected by sanctions, and that 39 per cent of respondents to their survey had been sanctioned in the past year.⁸⁴ Evidence suggests sanctions are being applied to homeless people because 'they cannot comply with conditionality requirements and not because they will not comply'.⁸⁵

2.6.2 Homelessness in Wales

59. Housing and homelessness policy and strategy in Wales is largely devolved to the Welsh Government. The Housing (Wales) Act 2014 implemented key reforms to the law on homelessness in Wales. These reforms included the creation of a duty on local authorities to take 'all reasonable steps' to prevent someone from becoming homeless within 56 days, to work more closely with housing associations and to

⁸¹ Ministry of Justice (2014), UK's 6th periodic report to UN CESCR, p. 25. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2f6&Lang=en [accessed: 21 April 2016].

⁸² Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S. and Watts, B. (2015), The homelessness monitor: England 2015. Available at: http://www.crisis.org.uk/data/files/publications/Homelessness_Monitor_England_2015_final_web.pdf [accessed: 21 April 2016].

⁸³ UK Statistics Authority, Statistics on Homelessness and Rough Sleeping in England. Assessment of compliance with the Code of Practice for Official Statistics, 2015

⁸⁴ Batty, E., Beatty, C., Casey, R., Foden, M., McCarthy, L. and Reeve, K. (2015), Homeless people's experiences of welfare conditionality and benefit sanctions. Available at: <http://www.crisis.org.uk/publications-search.php?fullitem=472> [accessed: 21 April 2016].

⁸⁵ Ibid., p. v.

provide private rented housing where necessary. The Welsh Government has provided additional training programmes and funding to help with the change.

60. Since 2011, the number of households deemed to be homeless has been falling. It has been suggested that this downward trend could be due to local authorities preparing for the new focus on prevention and to administrative changes, rather than to a fall in homelessness demand.⁸⁶

61. EHRC research has demonstrated that while homelessness has declined in Wales, some groups of people are more likely to be homeless than others. The profile of statutorily homeless households in Wales changed markedly between 2009/10 and 2014/15, with significant increases in the number of people fleeing domestic abuse (up 19 per cent) and people with poor mental health or learning disabilities (up 24 per cent).⁸⁷

2.6.3 Temporary accommodation

62. Local authorities in England have a duty to provide temporary accommodation for eligible homeless people who are in priority need. UK Government data show that the numbers in temporary accommodation in England have increased since 2011. They also show that by the end of September 2015, there were 68,560 homeless households in temporary accommodation (including Bed and Breakfasts [B&Bs]).⁸⁸ Twenty-seven per cent of these were placed in another local authority area, with implications for individuals' support networks.

63. The Homeless Code of Guidance for Local Authorities in England states that use of B&B accommodation should be avoided wherever possible and, where it is necessary, applicants should be moved to more suitable accommodation as soon as possible.⁸⁹ At 30 September 2015, 5,910 households were living in B&B

⁸⁶ Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S. and Watts, B. (2015), The homelessness monitor: Wales 2015. Available at: http://www.crisis.org.uk/data/files/publications/HomelessnessMonitorWales2015_ExecutiveSummary.pdf [accessed: 21 April 2016].

⁸⁷ EHRC (2015), 'Is Wales Fairer?', p. 18. Available at: <http://www.equalityhumanrights.com/publication/wales-fairer> [accessed: 21 April 2016].

⁸⁸ Department for Communities and Local Government (DCLG), Statutory Homelessness: July to September Quarter 2015, England. Available at: <https://www.gov.uk/government/statistics/statutory-homelessness-in-england-july-to-september-2015> [accessed: 21 April 2016].

⁸⁹ DCLG (2006), Homelessness Code of Guidance for Local Authorities, paragraph 7.6. Available at: <https://www.gov.uk/government/publications/homelessness-code-of-guidance-for-councils-july-2006> [accessed: 21 April 2016].

accommodation, an increase of 26 per cent compared with the same date the previous year.⁹⁰

64. The EHRC notes the introduction of the Gold Standard Initiative, which seeks to prevent homelessness in England.⁹¹ However, the scheme is not mandatory for local authorities to join and although most have signed up, funding is very limited. Local authorities are reported to be struggling to attain the standard, due to staffing and resource pressures.⁹²

65. In Wales, there were 1,935 households in temporary accommodation at the end of September 2015.⁹³ Forty per cent were in private sector accommodation and 155 households were in B&B accommodation, of which 15 were families with children. There are no firm data on the number of 16-17 year olds placed in B&Bs in Wales.

66. The use of B&B and other types of temporary accommodation raises concerns with regards to the right to adequate housing under Article 11 ICESCR. The right to housing is understood by UN CESCR as including legal security of tenure and the availability of facilities essential for health, security, comfort and nutrition.⁹⁴

Temporary accommodation may not provide this security or facilities and, as a consequence, may not constitute adequate housing.

2.6.4 Affordable housing

67. A UK Government policy which meant that developments of fewer than 10 houses in England were exempt from the requirement to include affordable housing

⁹⁰ DCLG (2015), Statutory Homelessness: July to September Quarter 2015, England. Available at: <https://www.gov.uk/government/statistics/statutory-homelessness-in-england-july-to-september-2015> [accessed: 21 April 2016].

⁹¹ DCLG and Mark Prisk. 2013, *Press release: Mark Prisk challenges councils to find stable homes for families*. [ONLINE]. Available at: <https://www.gov.uk/government/news/mark-prisk-challenges-councils-to-find-stable-homes-for-families> [accessed: 21 April 2016].

⁹² Spurr, H. 2014. *Staffing and resource pressures hinder £1.7m homelessness programme*. [ONLINE]. Available at: http://www.insidehousing.co.uk/care/staffing-and-resource-pressures-hinder-17m-homelessness-programme/7005315.article?utm_medium=email&utm_source=Ocean+Media+&utm_campaign=4634875_IH-DAILY-290814-NE&dm_i=1HH2,2CAJ,7UMXMW,A1LV9,1 [accessed: 21 April 2016].

⁹³ Welsh Government (2015), Homelessness July-September 2015. Available at: <https://statswales.wales.gov.uk/v/BcJh> [accessed: 21 April 2016].

⁹⁴ UN CESCR (1991), General Comment No. 4, Article 11: the right to adequate housing, paragraph 8. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fGEC%2f4759&Lang=en [accessed: 21 April 2016].

and the introduction of the Vacant Building Credit⁹⁵ were recently successfully challenged in the High Court in July 2015.⁹⁶ The local authorities who took the case argued that the policy would result in a loss of 21 per cent of affordable housing contributions across the country. The DCLG has been given right to appeal.

68. The UK Government is also proposing changes to broaden the definition of affordable housing in national planning policy to include a wider range of housing, including starter homes. This means that local authorities in England may need to develop new policies or review existing ones.⁹⁷ The Equality Impact Assessment published by the DCLG noted that households under 40 years old may benefit from the broader definition due to age eligibility criteria, but those aged 40 and over would not fare as well.⁹⁸ In addition, women may be less likely to benefit than men as they are more likely to move into existing types of affordable housing. Similarly, households containing at least one disabled person or person with a long-term illness may not do as well because they are less likely to be aspiring home owners and more likely to move into the social sector.

69. Under Article 11 ICESCR, the UK should ensure 'that the percentage of housing-related costs is, in general, commensurate with income levels' and that housing subsidies exist for those unable to obtain affordable housing.⁹⁹ The EHRC's analysis suggests that if the DCLG is successful at appeal, the reintroduced policy, in combination with the broader definition of affordable housing, could make local authorities less able to provide sufficient numbers of affordable homes for the most vulnerable. This could reduce people's access to affordable housing, which would constitute a regressive measure under Article 11 ICESCR.

⁹⁵ The Vacant Building Credit is a financial incentive provided to property developers to encourage building on sites containing vacant buildings.

⁹⁶ *R (oao West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government)* [2015] EWHC 2222 (Admin). Available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2015/2222.html> [accessed: 21 April 2016].

⁹⁷ Planning Resource. 2015. *NPPF consultation: Affordable housing 'In perpetuity' restrictions to be removed*. [ONLINE]. Available at: <http://www.planningresource.co.uk/article/1376039/nppf-consultation-affordable-housing-in-perpetuity-restrictions-removed> [accessed: 21 April 2016].

⁹⁸ DCLG (2015), Consultation on proposed changes to national planning policy: Equalities Statement. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482890/Equalities_statement_NPPF_fin.pdf [accessed: 21 April 2016].

⁹⁹ UN CESCR (1991), General Comment No. 4, Article 11: the right to adequate housing, paragraph 8. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fGEC%2f4759&Lang=en [accessed: 21 April 2016].

70. In 2013/14 in Wales, there was an increase of 18 per cent in the number of additional affordable homes compared with 2012/13. There had been a fall of 16 per cent in the previous year.¹⁰⁰ By 31 March 2015, 91 per cent of the Welsh Government's target for 2016 on affordable housing provision had been achieved¹⁰¹ and reports suggest it is on track to provide an additional 10,000 affordable homes over its four-year term.¹⁰² However, this falls short of the estimated number of required affordable homes by 5,000.

¹⁰⁰ Welsh Government (2014), Affordable Housing Provision in Wales 2013-14, Statistics for Wales First Release SDR 177/2014. Available at: <http://gov.wales/docs/statistics/2014/141023-affordable-housing-provision-2013-14-en.pdf> [accessed: 21 April 2016].

¹⁰¹ Welsh Government (2015), Affordable Housing Provision 2014-15 Available at: <http://gov.wales/statistics-and-research/affordable-housing-provision/?lang=en> [accessed: 21 April 2016].

¹⁰² Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S. and Watts, B. (2015), The homelessness monitor: Wales 2015. Available at: http://www.crisis.org.uk/data/files/publications/HomelessnessMonitorWales2015_ExecutiveSummary.pdf [accessed: 21 April 2016].

Section 3: Access to work and working conditions in the UK – Articles 6 and 7

71. In 'Socio-economic rights in the UK: List of Issues', the EHRC provided information to UN CESCR on: employment rates overall; the conditions of work of migrant workers; overseas domestic workers; low pay; and agency work.¹⁰³ Much of the information provided here is based on EHRC research from 'Is Britain Fairer?' although updates are provided where data exists.

3.1 Access to work in the UK – List of Issues, paragraph 9

72. Access to work covers devolved and non-devolved areas. This section largely provides UK or Great Britain-wide figures.

73. The UK labour market is buoyant and growing: the employment rate is at 73.9 per cent, the highest since records began, and has been growing steadily since its low point of 70.1 per cent in 2011. The proportion of economically active people aged 16 and over who are out of work and seeking work is known as the unemployment rate, and this too has seen recent positive change: it was 5.2 per cent in the last quarter, the lowest since 2008.¹⁰⁴

74. Under Article 6 ICESCR on the right to work, taken in conjunction with the right to freedom from discrimination under Article 2(2), the UK Government has a duty to realise progressively the right of all people to access work on a non-discriminatory basis. This should include recognition that some groups experience more difficulty than others in accessing work.

¹⁰³ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', pp. 54-61. Available at: <http://www.equalityhumanrights.com/en/sites/default/files/uploads/documents/humanrights/UN/ICESCR%20-%20FINAL%2014-08-15%20%282%29.pdf> [accessed: 21 April 2016].

¹⁰⁴ Office for National Statistics (2015), Labour Market Statistics December 2015 (covering period from August to October 2015). Available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-385330I> [accessed: 21 April 2016].

3.1.1 Young people's access to work in the UK

75. The employment rate among the working-age population in 2013 was lowest for those aged 16-24 (47.6 per cent) and remained significantly higher for all other age groups in comparison, especially for people aged 35-44 and 45-54 (81.3 per cent).¹⁰⁵ In 2013, the unemployment rate in the 16-24 age group (20.3 per cent) was at least twice as high as the next highest group (25-34 year olds at 7 per cent).¹⁰⁶ More recent quarterly data still shows that young people are less likely to be accessing the labour market: unemployment rates for 16-17 year olds were highest at 27.3 per cent, with the next highest group being 18-24 year olds. For other age groups, the highest rate of unemployment was 5.0 per cent.¹⁰⁷

76. Employment rates for 16-24 year olds remain lower than for other working-age groups, even after taking into account the number of young people in full-time education, which has increased in recent years for a number of reasons.¹⁰⁸ During the recession, young people were the most heavily affected, with much larger proportions falling out of the labour market. Although both the employment rate and unemployment rate are beginning to return to levels experienced before the recession, young people remain less likely to access employment.

3.1.2 Muslims' access to work

77. In the EHRC's report 'Is Britain Fairer?', we indicated that of all religious and non-religious groups, Muslims in Great Britain had the lowest employment rate in 2013: 47.2 per cent compared to 73.4 per cent for those with no religious beliefs.¹⁰⁹ Muslims also had the highest unemployment rate (17.2 per cent) of any religious

¹⁰⁵ EHRC (2015), 'Is Britain Fairer?', Domain G: Productive and valued activities, pp. 92-93. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/productive-and-valued-activities-domain> [accessed: 21 April 2016].

¹⁰⁶ EHRC, 'Is Britain Fairer?', Domain G: Productive and valued activities, Autumn 2015, pp. 105-6. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/productive-and-valued-activities-domain> [accessed: 21 April 2016].

¹⁰⁷ Office for National Statistics (2015), Labour Market Statistics December 2015, Table A05 not seasonally adjusted. Available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-385330I> [accessed: 21 April 2016].

¹⁰⁸ The EHRC report 'Is Britain Fairer?' found that more young people are staying in full-time education for a number of reasons, including the recession and scarcity of employment opportunities, but also because of changes in voluntary school leaving age in England. The Education and Skills Act 2008 increased the minimum age at which young people in England can leave learning, requiring them to continue in education or training to the age of 17 from 2013 and to 18 from 2015.

group in 2013 (compared those with no religion 7.9%).¹¹⁰ Low employment rates and high unemployment rates were particularly prevalent among young Muslim men.

78. A report by Demos noted the high prevalence of British Muslims among unemployed and economically inactive people.¹¹¹ The report also found that British Muslims are under-represented in the top professions and less likely to be in education, employment or training. They suggest that these poor labour market outcomes sustain higher levels of poverty and poor socio-economic conditions.

3.1.3 Disabled people's access to work in the UK

79. Since 'Socio-Economic Rights in the UK: List of Issues', we have conducted analysis of the UK Government's Access to Work programme (AtW) as part of monitoring the UK's compliance with CRPD. The UK House of Commons Work and Pensions Select Committee have also published the findings and recommendations of its inquiry into Welfare-to-Work.¹¹²

80. In 2013, 47.5 per cent of disabled people in Britain were in employment compared to 70 per cent of the population.¹¹³ Between 2008 and 2013 the unemployment rate for disabled people increased by 3.2 per cent compared to an increase of 1.8 per cent for non-disabled people.¹¹⁴ The UK Government has made reducing the disability employment gap a priority. The EHRC has welcomed this commitment and has encouraged the UK Government to monitor its progress. As part of this, it should expand the employment reporting duty in Section 1 of the

¹¹⁰ EHRC (2015), 'Is Britain Fairer?', Domain G: Productive and valued activities, pp. 102 and 118-9, Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/productive-and-valued-activities-domain> [accessed: 21 April 2016].

¹¹¹ Demos. 2015. *Rising to the Top*. [ONLINE]. Available at: <http://www.demos.co.uk/project/rising-to-the-top/> [accessed: 21 April 2016].

¹¹² House of Commons Work and Pensions Committee (2015), *Welfare-to-work*. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/welfare-to-work-15-16/> [accessed: 21 April 2016].

¹¹³ EHRC (2015), 'Is Britain Fairer?', Domain G: Productive and valued activities, p. 16. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/productive-and-valued-activities-domain> [accessed: 21 April 2016].

¹¹⁴ EHRC (2015), 'Is Britain Fairer?', Productive and Valued Activities Domain, Table EG1.2. Available at: http://ehrcv2oszpjdinzc.devcloud.acquia-sites.com/sites/default/files/eg1.2_esw_unemployment.xls (Data extracted from Labour Force Survey 2008–13) [accessed: 21 April 2016].

WRWA to include a duty to measure and report on progress towards closing this gap.¹¹⁵

81. AtW in Britain is delivered by DWP through Jobcentre Plus and provides practical support to disabled people and their employers to help them overcome work-related obstacles. AtW helped 36,820 disabled people in 2014-15.¹¹⁶ The scheme will pay up to 100 per cent of the approved costs of support for:

- special aids and equipment
- adaptations to premises and equipment
- support workers
- travel to work and travel within work, and
- communication support at interview.

82. In March 2015, the UK Government announced that AtW awards would be capped at one and a half times the average salary (£40,800),¹¹⁷ which it estimated would allow the scheme to be extended to around 945 extra users.

83. DWP's equality analysis of AtW explicitly suggests the cap is consistent with Article 27 CRPD (and implicitly Article 7 ICESCR) because it will open the scheme to more disabled people. However, DWP also notes that the majority of users affected by the cap will be those with a hearing impairment, followed by those with visual impairments (although this group represents a much smaller proportion).¹¹⁸ In the EHRC's analysis, this approach may have a disproportionate impact on the ability of those with hearing and visual impairments to stay in their current form of employment. DWP will need to monitor these impacts and take appropriate mitigating actions to ensure the changes to AtW comply with Article 7 ICESCR when read with Article 2.

¹¹⁵ EHRC (2015), Parliamentary Briefing Welfare and Work Bill Committee Stage: Clauses 1 and 2, p.2. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/welfare-reform-and-work-bill-committee-stage-clauses-1-and-2> [accessed: 21 April 2016].

¹¹⁶ DWP (2015), Access to Work Official Statistics. Available at: <https://www.gov.uk/government/statistics/access-to-work-individuals-helped-up-to-june-2015> [accessed: 21 April 2016].

¹¹⁷ DWP. 2015. *Press release: New Measures to Support More Disabled People into Work*. [ONLINE]. Available at: <https://www.gov.uk/government/news/new-measures-to-support-more-disabled-people-into-work> [accessed: 21 April 2016].

¹¹⁸ DWP (2015), Equality analysis for the future of Access to Work, paragraph 3.1.11. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426416/future-of-access-to-work-equality-analysis.pdf [accessed: 21 April 2016].

84. DWP's equality analysis notes that the AtW cap may cause some of the cost of support to fall back on employers and 'there is a risk that this may discourage employers from employing disabled people, increasing the likelihood of unlawful discrimination and reducing equality of opportunity.' DWP has committed to 'take steps to monitor the impact and will consider if further flexibilities are required should an adverse impact be found.'¹¹⁹

85. Work Choice is a specialist voluntary DWP employment programme designed to help disabled people with complex needs to find work and stay in a job. From the start of the Work Choice programme in October 2010 until the end of 2015, there were 121,700 referrals, 94,350 starts and 41,140 job outcomes.¹²⁰

86. The House of Commons Work and Pensions Committee recommended that a separate, voluntary employment programme should be retained and expanded, and that specialist organisations should continue to deliver it. The Work and Pensions Committee identified two main flaws in the current design of Work Choice:

- it is a capped programme with tightly defined eligibility criteria, and the number of places available does not meet demand, and
- the current expectation is for participants to be able to work for 16 hours per week after six months of pre-employment support. This could effectively exclude people with more substantial needs who would require support for a longer period and may not reasonably be expected to work 16 hours per week.¹²¹

87. Referrals to Work Choice expire in April 2017 and those to the UK Government's mainstream, mandatory Welfare-to-Work programme expire in March 2017. DWP is considering options for renewal and the Minister for Employment has indicated that consolidation would 'make sense' from the Department's perspective.¹²² However, the EHRC supports the Work and Pensions Committee's findings that 'there is too great a risk that consolidating support for [disabled people and those with a long-term health condition] into a national mainstream programme, delivered by non-

¹¹⁹ Ibid., paragraph 3.1.12, note 19.

¹²⁰ DWP (2016), Work Choice Official Statistics. Available at: <https://www.gov.uk/government/statistics/work-choice-referrals-starts-and-job-outcomes-to-december-2015> [accessed: 21 April 2016].

¹²¹ House of Commons Work and Pensions Committee (2015), Welfare-to-work, paragraph 42-43. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/welfare-to-work-15-16/> [accessed: 21 April 2016].

¹²² House of Commons Work and Pensions Committee (2015), Welfare-to-work, paragraph 37. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/welfare-to-work-15-16/> [accessed: 21 April 2016].

specialist prime contractors, will diminish the quality and effectiveness of support available.¹²³

3.2 Working conditions in the UK – List of Issues, paragraphs 10, 11 and 13

88. Despite an improving labour market, conditions of work have become less favourable for some people. The right to just and favourable conditions of work includes: the right to fair remuneration, which provides a decent living for workers and their families; and the right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay.

3.2.1 Casualisation of employment

89. The proportion of those in part-time work who were unable to find a full-time job increased from around 10 per cent in 2008 to over 15 per cent in 2015. Self-employed people, women, the young, Asians and disabled people were most likely to be in part-time jobs that they would prefer to be full-time.¹²⁴ Underemployment has risen sharply since 2008, when it was close to 2 million. In 2013, over 3.1 million people in work wanted more hours.¹²⁵ Numbers of people in temporary employment have also increased, from 1.4 million in 2008 to over 1.6 million people in 2015.¹²⁶ There are also signs of increased use of unpaid internships; the majority of internships remain unpaid and employers could be using this as a form of cheap labour.¹²⁷

90. A zero-hours contract is generally understood to be a contract between an employer and a worker where the employer is not obliged to provide minimum

¹²³ Ibid., paragraph 45.

¹²⁴ Office for National Statistics (2015), Labour Market Statistics December 2015, Table EMP01 not seasonally adjusted. Available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-385330I> [accessed: 21 April 2016].

¹²⁵ Office for National Statistics (2014), Underemployment and Overemployment in the UK. Available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-386785> [accessed: 21 April 2016].

¹²⁶ Office for National Statistics (2015), Labour Market Statistics December 2015, Table EMP01 not seasonally adjusted. Available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-385330I> [accessed: 21 April 2016].

¹²⁷ Social Mobility and Child Poverty Commission (SMCPC) (2014) *State of the Nation 2014: Social Mobility and Child Poverty in Great Britain*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365765/State_of_Nation_2014_Main_Report.pdf [accessed: 21 April 2016].

working hours and the worker is not obliged to accept any work offered. Reported use of zero-hours contracts increased in 2014 from 2013¹²⁸ and nearly two-fifths of employers think they will be a long-term feature of the UK labour market.¹²⁹ Almost half of those on zero-hours contracts (47 per cent) report they are satisfied with having no minimum contracted hours. However, those workers on these contracts are much more likely to be looking for other work or to be underemployed than those who are not. Zero-hours contracts can result in diluted employment rights, an unequal balance of power, a potential climate of fear and heightened job insecurity.¹³⁰ The unpredictability of income impedes both important financial decisions and socio-economic progress.¹³¹ At present, the only legislative measures introduced to ensure that zero-hours contracts are not used to erode employee rights are to prohibit the use of clauses which prevent employees from taking up posts with other employers, and to provide redress for employees who experience a detriment or dismissal as a result of working for other employers.¹³²

91. Recent labour market growth has been heavily influenced by large increases in self-employment, which accounts for 44 per cent of the net rise in employment since mid-2010 to 2014.¹³³ There are high and increased proportions of older people, women and some ethnic groups in self-employment over this time. The highest proportions of men and women in self-employment are Gypsies or Irish Travellers.

¹²⁸ Office for National Statistics (2015), Analysis of employee contracts that do not guarantee a minimum number of hours. Available at: <http://www.ons.gov.uk/ons/rel/lmac/contracts-with-no-guaranteed-hours/zero-hour-contracts--2014/analysis-of-employee-contracts-that-do-not-guarantee-a-minimum-number-of-hours.html> [accessed: 21 April 2016]. The [ONS state that the increase in reported use of ZHCs may be partly due to increased awareness of them.](#)

¹²⁹ CIPD (2015), Zero-hours and short-hours contracts in the UK: employer and employee perspective, p. 6. Available at: http://www.cipd.co.uk/binaries/zero-hours-and-short-hours-contracts-in-the-uk_2015-employer-employee-perspectives.pdf [accessed: 21 April 2016].

¹³⁰ CIPD (2013), Zero hour contracts: Myth and reality. Available at: http://www.cipd.co.uk/binaries/zero-hours-contracts_2013-myth-reality.pdf [accessed: 21 April 2016].

¹³¹ Trade Union Congress (2014), The Decent Jobs Deficit: the human cost of zero-hours working in the UK. Available at: https://www.tuc.org.uk/sites/default/files/DecentJobsDeficitReport_0.pdf [accessed: 21 April 2016].

¹³² The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 No. 2021. Available at: <http://www.legislation.gov.uk/ukxi/2015/2021/contents/made> [accessed: 21 April 2016].

¹³³ Trade Union Congress. 2014. *More than two in five new jobs created since mid-2010 have been self-employed.* [ONLINE]. Available at: <https://www.tuc.org.uk/economic-issues/economic-analysis/labour-market/labour-market-and-economic-reports/more-two-five-new> [accessed: 21 April 2016].

¹³⁴ Self-employed people tend to work longer hours than employees¹³⁵ and have experienced a greater decline in average hourly pay.¹³⁶ There is a lack of clarity around self-employment status, allowing employers to avoid providing workers with the legal protections to which they are entitled, such as the National Minimum Wage and holiday pay.¹³⁷

92. The increase in underemployment, self-employment and the use of zero-hours contracts raises concerns related to the implementation of Article 7 ICESCR in the UK, especially as these forms of employment may not guarantee workers the right to rest, reasonable limitation of working hours and periodic holidays with pay.

3.2.2 Low pay

93. In 'Socio-economic rights in the UK: List of Issues', the EHRC noted the proposed increase in the National Minimum Wage and particular issues with low pay in the cleaning and home care sectors.

94. Following the EHRC's report on employment practices in the cleaning sector,¹³⁸ we set up a taskforce, which includes BIS, to improve conditions of work in the sector. BIS collaborated with the EHRC to produce guidance for cleaning operatives on their employment rights, including their rights in relation to pay.¹³⁹ Since publishing 'Socio-economic rights in the UK: List of Issues', the EHRC has launched

¹³⁴ Clark, K. 2014. *Is the picture of Pakistani self-employment really so rosy?* [ONLINE]. Available at: <http://blog.policy.manchester.ac.uk/featured/2014/04/pakistani-self-employment-in-the-recession/> [accessed: 21 April 2016].

¹³⁵ Trade Union Congress. 2014, *More than two in five new jobs created since mid-2010 have been self-employed.*[ONLINE]. Available at: <https://www.tuc.org.uk/economic-issues/economic-analysis/labour-market/labour-market-and-economic-reports/more-two-five-new> [accessed: 21 April 2016].

¹³⁶ Office for National Statistics (2015), Analysis of employee contracts that do not guarantee a minimum number of hours. Available at: <http://www.ons.gov.uk/ons/rel/lmac/contracts-with-no-guaranteed-hours/zero-hour-contracts--2014/analysis-of-employee-contracts-that-do-not-guarantee-a-minimum-number-of-hours.html> [accessed: 21 April 2016].

¹³⁷ See, for example: Citizen's Advice Bureau and New Policy Institute (2015), Who are the self-employed? Available at: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Whoaretheselfemployed.pdf> [accessed: 21 April 2016].

¹³⁸ EHRC (2014), The invisible workforce: employment practices in the cleaning sector. Available at: <http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector> [accessed: 21 April 2016].

¹³⁹ EHRC (2015), Know your rights at work campaign: A briefing pack for cleaning businesses. Available at: http://ehrcv2oszpjdinzc.devcloud.acquia-sites.com/sites/default/files/ehrc_briefing_pack.pdf [accessed: 21 April 2016].

'Is Britain Fairer?' and various analyses of the increase in the National Minimum Wage have been released.

95. Under Article 7 ICESCR, working conditions must include fair wages which provide a decent living for workers and their families. Low paid work¹⁴⁰ affects 21 per cent of all workers or around 5.5 million individuals in Great Britain.¹⁴¹ The Social Mobility and Child Poverty Commission has found that 'the UK has an endemic low pay problem. Not only are millions paid low hourly wages but too many are stuck in low pay with little prospect to progress'.¹⁴² There is a concentration of women in low wage sectors; they make up 62 per cent of workers paid below the Living Wage.¹⁴³ Of the 5.2 million people in low paid work in Great Britain, 3.2 million of these are women. Women also account for three-quarters of the 6 million part-time workforce, which is particularly at risk of low pay.¹⁴⁴

96. Age group also affects the likelihood of being paid below the Living Wage. Around 72 per cent of employees in the 18-21 year old category are paid below the Living Wage compared with 30 per cent of 22-29 year olds and 17 per cent of 30-39 year olds.¹⁴⁵

¹⁴⁰ Low paid work referred to here is work where pay is below two-thirds median hourly pay in April 2013.

¹⁴¹ Resolution Foundation (2015), *Low Pay Britain 2015*, p. 5. Available at: <http://www.resolutionfoundation.org/publications/low-pay-britain-2015/> [accessed: 21 April 2016].

¹⁴² Social Mobility and Child Poverty Commission (2014), *State of the Nation 2014: Social Mobility and Child Poverty in Great Britain*, p. 179. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365765/State_of_Nation_2014_Main_Report.pdf [accessed: 21 April 2016].

¹⁴³ The Living Wage is calculated by the Centre for Research in Social Policy. It is a voluntary rate set at the amount an individual needs to earn to cover the basic costs of living. See: EHRC (2015), 'Socio-economic rights in the UK', p. 57. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016]. The statistic here is taken from: Institute for Public Policy Research and Resolution Foundation (2013), *Beyond The Bottom Line: The challenges and opportunities of a living wage*. Available at: http://www.ippr.org/assets/media/images/media/files/publication/2013/01/beyond-bottom-line_living-wage_Jan2013_10162.pdf?noredirect=1 [accessed: 21 April 2016].

¹⁴⁴ Resolution Foundation (2014), *Low Pay Britain 2014*, p. 6. Available at: <http://www.resolutionfoundation.org/wp-content/uploads/2014/10/Low-Pay-Britain-20141.pdf> [accessed: 21 April 2016].

¹⁴⁵ Markit for KPMG (2015), *Living wage research*, p.17. Available at: <https://home.kpmg.com/uk/en/home/media/press-releases/2015/11/six-million-brits-are-earning-less-than-a-living-wage.html> [accessed: 21 April 2016].

3.2.3 National Minimum Wage increase

97. As set out in 'Socio-economic rights in the UK: List of Issues', the UK Government has announced a welcome increase to the statutory National Minimum Wage for employees aged 25 and over which will take effect as of April 2016. The new rate has been named the National Living Wage by the UK Government. It is set at a lower rate than the voluntary Living Wage, which is calculated by an independent body as sufficient to cover basic costs of living in the UK.¹⁴⁶ BIS has since set out measures to ensure that businesses pay the National Living Wage, which include doubling penalties for non-payment, increasing the enforcement budget and setting up a team to take forward criminal prosecutions.¹⁴⁷

98. Calculations by the Resolution Foundation estimate that around 1.9 million employees will have their pay increased to meet the new National Living Wage in 2016, and that it will reduce the prevalence of low pay to its lowest level since 1985.¹⁴⁸ The Office for Budget Responsibility has found that around 6 million employees will have higher hourly earnings as a result of the National Living Wage by 2020.¹⁴⁹ The increase will have a particular impact on women, boosting the wages of 29 per cent of female employees compared with 18 per cent of male employees, but due to more women being in part-time work they will receive smaller annual gains.¹⁵⁰

99. The Low Pay Commission has assessed that the gender pay gap among the lowest paid has fallen since the introduction of the National Minimum Wage from

¹⁴⁶ EHRC (2015), 'Socio-economic rights in the UK', p. 57. Available at: <http://www.equalityhumanrights.com/en/sites/default/files/uploads/documents/humanrights/UN/ICESCR%20-%20FINAL%2014-08-15%20%282%29.pdf> [accessed: 21 April 2016].

¹⁴⁷ BIS, HM Revenue and Customs, and The Rt Hon Sajid Javid MP. 2015. *Press Release: Measures to ensure people receive fair pay announced*. [ONLINE]. Available at: <https://www.gov.uk/government/news/measures-to-ensure-people-receive-fair-pay-announced> [accessed: 21 April 2016].

¹⁴⁸ Resolution Foundation (2015), *Low Pay Britain 2015*, p. 6. Available at: <http://www.resolutionfoundation.org/publications/low-pay-britain-2015/> [accessed: 21 April 2016].

¹⁴⁹ This figure includes people who will benefit from spillover effects of the increased wages of those who earn less than they do. Office of Budget Responsibility (2015), *Economic and Fiscal Outlook*, Annex B. Available at: <http://budgetresponsibility.org.uk/economic-fiscal-outlook-july-2015/> [accessed: 21 April 2016].

¹⁵⁰ Resolution Foundation (2015), *Higher Ground: who gains from the National Living Wage?*, p. 6. Available at: <http://resolutionfoundation.org/publications/higher-ground-who-gains-from-the-national-living-wage/> [accessed: 21 April 2016].

12.9 per cent in 1998 to 5.5 per cent in 2014.¹⁵¹ The EHRC welcomes the improvements the introduction of the National Living Wage will provide in further closing the gender pay gap, but notes that this must form part of a policy and regulatory framework that aims to completely close the gap.¹⁵²

100. The National Living Wage will not be available to under 25 year olds, so it will have a limited effect on the disproportionate number of those aged 18-21 who are paid below the voluntary Living Wage. There is a risk that employers may discriminate against employees on the basis of age due to the requirement to pay workers who are 25 years old and over the National Living Wage, which does not apply to workers under 25 years old.

101. A study conducted by the Institute for Fiscal Studies found that the National Living Wage would only partially compensate for the losses that people faced due to tax and benefit changes announced in the Summer budget of July 2015. It also reported that the National Living Wage is 'not a substitute for targeted benefits and tax credits when it comes to poorer households and tackling poverty.'¹⁵³ The Resolution Foundation similarly found that the National Living Wage 'cannot solve the living standards challenge alone [and] should be seen as part of a package of measures designed to boost working opportunities, incentives and rewards.'¹⁵⁴

¹⁵¹ Low Pay Commission (2015), National Minimum Wage: Low Pay Commission Report 2015. Available at: <https://www.gov.uk/government/publications/national-minimum-wage-low-pay-commission-report-2015> [accessed: 21 April 2016].

¹⁵² The gender pay gap stood at 19.1 per cent in 2014% (EHRC, Socio-economic Rights in the UK, p. 62). The Fawcett Society found that if all employers were to pay the Living Wage, which is higher than the new National Living Wage set by the UK Government, the gender pay gap would be reduced by only 0.8 per cent. The Fawcett Society (2014), The time to act is now: Fawcett's gender pay gap briefing, p. 11. Available at: <http://www.fawcettsociety.org.uk/wp-content/uploads/2014/11/Fawcett-Equal-Pay-Day-report-November-2014.pdf> [accessed: 21 April 2016].

¹⁵³ Institute for Fiscal Studies (2015), An assessment of the potential compensation provided by the new 'National Living Wage' for the personal tax and benefit measures announced for implementation in the current parliament, IFS Briefing Note BN175, p. 15. Available at: <http://www.ifs.org.uk/publications/7975> [accessed: 21 April 2016].

¹⁵⁴ Resolution Foundation (2015), 'Higher Ground: who gains from the National Living Wage?', p. 8. Available at: <http://resolutionfoundation.org/publications/higher-ground-who-gains-from-the-national-living-wage/> [accessed: 21 April 2016].

3.2.4 Employment contracts for junior doctors in England

102. In February 2016, the Health Secretary announced the introduction of a new contract of employment for junior doctors in England.¹⁵⁵ Negotiations on the contracts between the UK Government and the British Medical Association (BMA), the trade union and professional body for doctors in the UK, have been taking place since January 2013.

103. The UK Government has emphasised that the new contract increases the basic salary of junior doctors, reduces the maximum number of hours that junior doctors can work in a week, and introduces a 'guardian' role in each NHS Trust which can impose fines for breaches of agreed working hours.¹⁵⁶

104. The BMA remains concerned about a number of provisions in the contract and has organised industrial action both before and after the announcement of its introduction. In particular the BMA raises concerns in relation to:

- reduction in pay rates for weekend and evening work
- uncertainty about how training or experience will be recognised in the new contract, including for women who take maternity leave and people who take career breaks for academic or other training, and
- uncertainty about how pay protection will apply to those who have taken parental or other leave.¹⁵⁷

105. In March 2016, the UK Government's Department of Health published its equality analysis on the contracts.¹⁵⁸ The analysis establishes that aspects of the new contract will adversely impact on groups which disproportionately comprise women, including those who work part time, who take maternity leave, and who have

¹⁵⁵ Oral statement to Parliament: Jeremy Hunt updates Parliament on the junior doctors' contract, 11/02/16. Available at: <https://www.gov.uk/government/speeches/jeremy-hunt-updates-parliament-on-the-junior-doctors-contract> [accessed: 21 April 2016].

¹⁵⁶ Department of Health and The Rt Hon Jeremy Hunt MP. 2016. *Oral statement to Parliament: Jeremy Hunt updates Parliament on the junior doctors' contract*. [ONLINE]. Available at: <https://www.gov.uk/government/speeches/jeremy-hunt-updates-parliament-on-the-junior-doctors-contract> [accessed: 21 April 2016].

¹⁵⁷ Malawana, J. (British Medical Association) (personal communication by letter 4 March 2016 to all NHS Trust Chief Executives in England). Available at: <http://www.bma.org.uk/-/media/files/pdfs/working%20for%20change/contract%20negotiations%202015/2016/johann%20malawana%20to%20trust%20chief%20executives%20040316.pdf> [accessed: 21 April 2016].

¹⁵⁸ Department of Health (2016), Junior doctors contract: equality analysis and family test. Available at: <https://www.gov.uk/government/publications/junior-doctors-contract-equality-analysis-and-family-test> [accessed: 25 April 2016].

responsibilities as carers.¹⁵⁹ The UK Government concludes that 'any indirect adverse effect on women is a proportionate means of achieving a legitimate aim' and therefore does not constitute indirect discrimination.¹⁶⁰

106. Section 149 of the Equality Act 2010 does not require an equality analysis to include an assessment of human rights impacts. Therefore, the Department of Health does not appear to have explicitly considered the impact of the contract on the right to just and favourable working conditions under Article 7 ICESCR, which the EHRC would consider to be good practice. Under Article 7(a)(i) ICESCR, the UK is obliged to ensure remuneration which guarantees conditions of work to women that are not inferior to those enjoyed by men. The EHRC is concerned that the UK Government's analysis suggests an adverse impact of the contract on groups that disproportionately include women, such as those who take time away from work for maternity leave and caring responsibilities. This may indicate that women junior doctors will have inferior conditions of work under the new contract, which would be inconsistent with Article 7 ICESCR, unless it can be justified.

107. With regards to the justification of this measure, the UK Government sets out a number of key objectives for the contract, including those relating to the affordability of a seven-day NHS and achieving cost-neutrality.¹⁶¹ UN CESCR has stated that lack of available resources does not constitute an objective and reasonable justification for a failure to remove differential treatment 'unless every effort has been made to use all resources that are at the State Party's disposition in an effort to address and eliminate the discrimination, as a matter of priority'. The EHRC considers the Department of Health has not yet provided this evidence, which it could do, for example by setting out its assessment of alternative and less discriminatory courses of action and the factors taken into account to balance the objectives of the contract against its differential impact on women.

¹⁵⁹ Department of Health (2016), Junior doctors contract: equality analysis and family test, paragraph 78

¹⁶⁰ Department of Health (2016), Junior doctors contract: equality analysis and family test, paragraphs 83 and 85.

¹⁶¹ Department of Health (2016), Junior doctors contract: equality analysis and family test, paragraph 7.

3.3 Discrimination at work in the UK – List of Issues, paragraphs 8 and 16

3.3.1 Lack of diversity at board level

108. Article 7 ICESCR sets out that all workers must have equal opportunity to be promoted in their employment to an appropriate higher level, subject only to seniority and competence. Some progress has been made in improving the gender diversity of the boards of companies in the FTSE 100 and FTSE 250.¹⁶² However, while the change between 2011 and 2015 has been positively received there is more work to be done in the area, especially in encouraging more female representation among executive directors.¹⁶³

109. By the end of 2014, Black and ethnic minority representation in FTSE 100 boardrooms was at around 5 per cent. Further evidence from research by Green Park in 2014 suggested that all-White executive teams ran 69 per cent of FTSE 100 companies and that 95 per cent of FTSE 100 board directors were White.¹⁶⁴ There are currently just two FTSE100 companies with a chair from an ethnic minority and only one with a female chair.¹⁶⁵

110. In the public sector, female representation in Senior Civil Service positions is improving; as of March 2014, 38 per cent of women work at a senior level (15 per cent in 1996) compared with 53 per cent of the Civil Service workforce as a whole. Ethnic minority representation in the Civil Service has also increased from four per cent in 1988 to 10 per cent in 2014, but this is still two percentage points below the overall percentage of the working population. Ethnic minority representation in the Senior Civil Service is lower still - just 7 per cent in 2014 - and the percentage of

¹⁶² The 100 and 250 companies listed on the London Stock Exchange with the highest market value. This progress is outlined in the UK State Response to the List of Issues, paragraph 26.

¹⁶³ Cranfield International Centre for Women Leaders (2014), The Female FTSE Board Report 2014, p. 23. Available at: www.som.cranfield.ac.uk/som/dinamic-content/research/ftse/The%20Female%20FTSE%20Board%20Report%202014.pdf [accessed: 21 April 2016]. See also: DfE, GEO and BIS report above, p. xx.

¹⁶⁴ Green Park Executive Recruitment, (2014) Green Park Leadership 10,000. Available on request at: <http://www.green-park.co.uk/green-park-leadership-10000> [accessed: 21 April 2016].

¹⁶⁵ Green Park Executive Recruitment, (2015), NEW Leadership 10,000 Spring 2015 Report. Available on request at: <http://www.green-park.co.uk/new-leadership-10000-report> [accessed: 21 April 2016].

disabled people continues to remain lower after some initial progress (just 5 per cent in 2014).¹⁶⁶

3.3.2 Pay gaps

111. In 'Socio-economic rights in the UK: List of Issues', the EHRC noted that the gender pay gap stood at 19.1 per cent in 2014, when full-time and part-time workers are taken into account, and highlighted the impact of a number of important factors and measures on the gender pay gap. We also noted that the disability and race pay gaps have not reduced since 2008 and that there are no regular analyses of these pay gaps, which prevents the UK Government from effectively understanding and tackling them.¹⁶⁷

112. Since then, the EHRC has published 'Is Britain Fairer?', which revealed additional information in relation to the race pay gap. Once in employment, Muslims are paid the least on average. Both Sikhs and Muslims have the highest pay gap compared to those with no religion, earning around 20 per cent less in 2013. Moreover, Muslims had the lowest average hourly pay of all religious and non-religious groups in 2013 (£8.30/hour compared with £10.70/hour).¹⁶⁸

113. Both the UK and Welsh Governments have responsibility to tackle pay gaps. In Wales, between 2008 and 2013, the gender pay gap narrowed from 20 per cent to 17 per cent. The gap narrowed because men's average pay declined more than women's. Pay gaps widened for young people, ethnic minorities and people from lower socio-economic groups compared with some other groups. Young people were the lowest paid of all by 2013, with average earnings of £6.50/hour compared with 35-44 year olds' average pay of £11.20/hour.¹⁶⁹

¹⁶⁶ National Audit Office (2015), 'Equality, diversity and inclusion in the civil service', p. 6. Available at: <http://www.nao.org.uk/wp-content/uploads/2015/06/Equality-diversity-and-inclusion-in-the-civil-service.pdf> [accessed: 21 April 2016].

¹⁶⁷ EHRC (2015), 'Socio-economic rights in the UK', pp. 62-69. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

¹⁶⁸ EHRC (2015), 'Is Britain Fairer?', Domain G: Productive and valued activities, p. 174. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/productive-and-valued-activities-domain> [accessed: 21 April 2016].

¹⁶⁹ EHRC (2015), 'Is Wales Fairer?', p. 14. Available at: <http://www.equalityhumanrights.com/en/publication-download/wales-fairer-report> [accessed: 21 April 2016].

114. As part of its Equality Objectives for 2016- 20, the Welsh Government has committed to identifying and reducing 'the causes of employment, skills and pay inequalities related to gender, ethnicity, age and disability'.¹⁷⁰

3.3.3 Increased free childcare allowance for three to four year olds in England

115. In its recent submission to the Committee on the Rights of the Child, the EHRC raised a number of concerns about the Childcare Act 2006, which has extended the existing 15 hours per week of free early education or childcare in England to 30 hours per week for three and four year olds whose parents or carers are working.¹⁷¹

116. The EHRC highlighted concerns around whether the extension of childcare will be adequately funded and the impact on providers, parents and children able to benefit from the Act if it is not. It also emphasised that the extended provision should deliver for all children, including those who are disabled and those with special educational needs (SEN).

117. The EHRC has also highlighted the different system for childcare in Wales, the fact that access to childcare has increased slightly but that provision is patchy, with poor supply in the South Wales Valleys and parts of rural Wales.¹⁷²

3.3.4 Pregnancy and maternity discrimination

118. In July 2015, the EHRC and BIS published a report on pregnancy and maternity-related discrimination at work.¹⁷³ While a majority of employers reported that it was in their interests to support pregnant women and those on maternity leave, the report also found that:

- 77 per cent of mothers said they had a negative or possibly discriminatory experience during pregnancy, maternity leave, and/or on return from maternity leave

¹⁷⁰ Welsh Government (2016), Equality Objectives 2016-2020. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/equality-objectives/?lang=en> [accessed: 21 April 2016].

¹⁷¹ EHRC (2015), Updated submission: Children's rights in the UK, April 2016, 4.4

¹⁷² EHRC (2015), 'Is Wales Fairer?', p. 17. Available at: <http://www.equalityhumanrights.com/en/publication-download/wales-fairer-report> [accessed: 21 April 2016].

¹⁷³ EHRC and BIS (2016), 'Pregnancy and Maternity-Related Discrimination and Disadvantage Summary of Key Findings: Surveys of Employers and Mothers. Available at: <http://www.equalityhumanrights.com/en/publication-download/pregnancy-and-maternity-related-discrimination-and-disadvantage-first-findings> [accessed: 21 April 2016].

- 11 per cent of mothers reported that they were dismissed, made redundant or treated so poorly that they felt they had to leave their job
- 20 per cent said they had experienced harassment or negative comments related to pregnancy or flexible working from their employer and/or colleagues
- 33 per cent felt unsupported by their employer at some point while pregnant or returning to work, and
- 50 per cent said they experienced negative consequences to their job opportunities and careers as a result of having a flexible working request approved.

119. The report also highlighted that there has been a 50 per cent decrease in pregnancy-related cases brought in employment tribunals since the introduction of employment tribunal fees.

3.4 Trade Union Bill

120. At the time of writing, the second day of the report stage on the Trade Union Bill was scheduled in the House of Lords. During the legislative process, the EHRC raised a number of concerns regarding the human rights implications of proposed provisions of the Trade Union Bill. The EHRC highlighted that BIS' analysis of these implications¹⁷⁴ does not consider the UK's obligations under ICESCR, the European Social Charter or Convention 87 of the International Labour Organization.¹⁷⁵

121. The regressive nature of measures in the Bill may cause them to fall short of the UK's obligations to realise progressively the right to freedom of association under Article 8 ICESCR. Although the provisions of the Bill do not completely prevent the ability of unions to strike, the principle of non-regression, as set out in Article 2(1) ICESCR needs to be considered. UN CESCR has explained that 'any deliberately retrogressive measures in that regard would require most careful consideration and would need to be fully justified by reference to the totality of rights provided for in the

¹⁷⁴ BIS (2015), Trade Union Bill: European Convention on Human Rights (ECHR) memorandum. Available at: <https://www.gov.uk/government/publications/trade-union-bill-european-convention-on-human-rights-echr> [accessed: 21 April 2016].

¹⁷⁵ EHRC (2016), Trade Union Bill: Second Reading, House of Lords., 11/01/16, Available at: <http://www.equalityhumanrights.com/en/node/4281> [accessed: 21 April 2016].

Covenant.’¹⁷⁶ This means that any regressive measures give rise to a greater obligation on the State to justify the measure, and closer scrutiny on proportionality in each instance.

122. These considerations apply in particular to the provisions on:

- minimum ballot turnout (Clause 2)
- minimum ballot support requirements for industrial action by workers in public services (Clause 3)
- the requirement for a notice period of one week of industrial action (Clause 7, as modified by the UK Government amendment during day one of the House of Lords report stage)
- the requirement for limiting the duration of a ballot mandate (Clause 8), and
- union supervision of picketing (Clause 9).

3.4.1 Ballot thresholds

123. Clause 2 of the Bill adds a new requirement that at least 50 per cent of those entitled to vote must have done so for the ballot to be valid. Clause 3 requires 40 per cent of all union members who are entitled to vote to support industrial action where the majority of those entitled provide important public services. The statutory meaning of ‘important public services’ could include the health service, education, or fire and transport services.

124. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization recommended that the UK Government consider modifying the Bill so that the minimum ballot support requirements for strike action do not apply to education and transport services.¹⁷⁷

125. The Joint Committee on Human Rights noted that the human rights compatibility of the measures on ballot thresholds will depend on their proportionality

¹⁷⁶ UN CESCR (1990), General Comment No. 3, E/1991/23, 14/12/1990, paragraph 9. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11 [accessed: 21 April 2016].

¹⁷⁷ International Labour Organization (2016), Report of the Committee of Experts on the Application of Conventions and Recommendations: Application of International Labour Standards 2016, International Labour Conference, 105th Session p. 153-4. Available at: [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2016-105-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2016-105-1A).pdf) [accessed: 21 April 2016].

and the objective justification of the UK Government for the difference in treatment of workers delivering important public services and other workers.¹⁷⁸

126. Both of these clauses amount to regressive measures in that they increase restrictions on the right to strike in conformity with national laws set out in Article 8(1)(d) ICESCR. The UK Government response to the List of Issues fails to recognise this when it states that it 'is satisfied that the provisions of the Bill are entirely compatible with the ICESCR'.¹⁷⁹

127. These increased restrictions may also impact on the UK's implementation of the European Social Charter. The European Committee of Social Rights has concluded that even before these proposed restrictions, the 'possibilities for workers to defend their interests through lawful collective action are excessively limited'.¹⁸⁰ They therefore need to be carefully considered. The ballot thresholds do not appear to be based on specific research or evidence and there is no explanation as to the level at which the thresholds are set.

3.4.2 Union supervision of picketing

128. Clause 9 of the Bill adds new requirements that trade unions must fulfil when organising peaceful picketing. These include the appointment of a picket supervisor, who must be issued with an authorisation letter and wear identification, and whose details must be provided to the police. The UK Government's consultation document on the issue suggests concerns with the intimidation of non-striking workers.¹⁸¹ However, as the status and responsibilities of the picket supervisor are not made clear, it is difficult to assess the proportionality of the measure or its effectiveness in achieving the aim of protecting the rights of non-striking workers. The Clause seeks

¹⁷⁸ JCHR (2016), First report of session 2015-16: Legislative scrutiny: Trade Union Bill, HL Paper 92, HC 630, paragraph 28. Available at: <http://www.publications.parliament.uk/pa/jt201516/jtselect/jtrights/92/9202.htm> [accessed: 21 April 2016].

¹⁷⁹ UK State response to UN CESCR's List of Issues (2016), paragraph 59. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fQ%2f6%2fAdd.1&Lang=en [accessed: 21 April 2016].

¹⁸⁰ European Committee of Social Rights, Conclusions XX-3 - United Kingdom - Article 6-4, XX-3/def/GBR/6/4/EN. Available at: <http://hudoc.esc.coe.int/eng/?i=XX-3/def/GBR/6/4/EN> [accessed: 21 April 2016].

¹⁸¹ BIS (2015), Consultation: Tackling intimidation of non-striking workers. Available at: <https://www.gov.uk/government/consultations/tackling-intimidation-of-non-striking-workers> [accessed: 21 April 2016].

to impose particular requirements on picketing protests organised by trade unions, but not on those organised by other groups.

3.4.3 Additional powers of the Certification Officer

129. The Certification Officer (CO) has a range of powers to ensure trade unions abide by various statutory requirements and their own internal rules, and that their finances are effectively managed. Clauses 15, 16 and 17 of the Bill, together with Schedules 1 and 2, set out new investigatory powers and sanctions available to the CO. The CO may use these powers of investigation in the absence of a complaint by an individual trade union member, and will be able to adjudicate the same complaint. The new proactive character of the CO's functions (that is, the power to instigate, investigate and then adjudicate the same complaint) compromises its impartiality and is inconsistent with the Article 6 ECHR requirement that a complaint should be impartially determined by an independent body. The UK Government has argued that the right of appeal to the Employment Appeal Tribunal would remedy any such breach of Article 6. However, the CO makes findings of fact and an appeal to the EAT lies only on a point of law.

Section 4: Access to justice, Article 2, List of Issues paragraph 17

130. In 'Socio-economic rights in the UK: List of Issues' the EHRC noted that restrictions in the scope of legal aid in England and Wales will have a significant impact on people's access to justice in relation to ESCR. It noted a particular concern about evidential requirements for accessing legal aid in private family law cases, which has led to a large proportion of women not being able to access civil legal aid to bring cases in relation to domestic violence. The EHRC found that administration of legal aid also presents obstacles to access to justice. EHRC recommended that the UK Government monitor the actual impact of these changes, including on potentially vulnerable groups.¹⁸² Since then, the EHRC has:

- commissioned a literature review to identify the reported potential and actual equality and human rights impacts of recent changes to civil law justice,¹⁸³ and
- provided information to the Committee on the Elimination of Discrimination against Women (UN CEDAW) on the UK's implementation of its concluding observation on legal aid and access to justice.¹⁸⁴

¹⁸² EHRC (2015), 'Socio-economic rights in the UK: List of Issues', pp. 75-85. Available at: <http://www.equalityhumanrights.com/en/sites/default/files/uploads/documents/humanrights/UN/ICESCR%20-%20FINAL%2014-08-15%20%282%29.pdf> [accessed: 21 April 2016].

¹⁸³ EHRC (2015), 'Equality, human rights and access to civil law justice: a literature review'. Available at: <http://www.equalityhumanrights.com/publication/equality-human-rights-and-access-civil-law-justice-literature-review> [accessed: 21 April 2016].

¹⁸⁴ Committee on Elimination of Discrimination Against Women (2013), Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland (30 July 2013), UN Doc. CEDAW/C/GBR/CO/7. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en [accessed: 21 April 2016]. The CEDAW Committee noted: the restrictions of the LASPO Act; the evidence requirements in cases of domestic violence; the proposed residency test; and employment tribunal fees. The Committee urged the UK to: ensure effective access to justice by women, in particular victims of violence, to courts and tribunals; continuously assess the impact of the reforms; and protect women from informal community arbitration systems, especially those that violate their rights under the Convention on the Elimination of All Forms of Discrimination against Women.

4.1 Key impacts of reforms to the civil law justice system in England and Wales¹⁸⁵

131. The literature review mentioned above highlighted the following impacts from the recent reforms to civil law justice in England and Wales:

- For disabled people, there is an impact on access to justice in welfare benefits, community care, housing and discrimination cases.
- For women, findings indicated an impact in family cases, where those who have experienced domestic violence are affected by the strict evidence requirements. There is also evidence of an adverse impact on women in relation to discrimination cases, which is due to the introduction of fees in employment tribunals.
- Ethnic minorities are potentially affected by the removal of many types of immigration cases from the scope of public funding.
- The proposed residence test for legal aid is reported to have a disproportionate impact on non-British nationals.
- Some people seeking redress for breaches of Article 8 ECHR (right to respect for private and family life) in relation to family, housing or immigration issues have experienced more difficulty following the introduction of LASPO. This is despite the existence of the exceptional case funding scheme.

132. The review also demonstrated a number of gaps in evidence, including on:

- the use of the fee remission system for employment tribunal fees
- why the legal aid that is still in scope is apparently so underused
- the impact of legal aid reforms for judicial review cases
- the impact of the increase in the small claims limit
- the extent to which mediation is used as an alternative, in particular by women of different religions or beliefs, and
- what has happened to people who can no longer access advice, representation or the courts.

¹⁸⁵ EHRC (2015), 'Equality, human rights and access to civil law justice: a literature review', pp. 7-9. Available at: <http://www.equalityhumanrights.com/publication/equality-human-rights-and-access-civil-law-justice-literature-review> [accessed: 21 April 2016].

4.2 Impact of employment tribunal fees in Great Britain on women and ethnic minorities

133. In 'Socio-economic rights in the UK: List of Issues' the EHRC noted the substantial drop in cases following the introduction of employment tribunal fees. The drop in the number of cases was particularly marked for those involving discrimination on the basis of sex, disability, race and sexual orientation, as well as those on equal pay and unfair dismissal.¹⁸⁶ The EHRC's report to UN CEDAW builds on this analysis. Given that over four-fifths of claimants for sex discrimination and equal pay cases are women, the introduction of tribunal fees has had a disproportionate impact on this group.¹⁸⁷ Proposed increases to court fees for divorce petitions are also likely to have a disproportionate impact on women, as women are the petitioners in 65 per cent of divorce proceedings.¹⁸⁸

134. Figures from the Ministry of Justice (MoJ)¹⁸⁹ indicate drops of 43 per cent in race discrimination claims¹⁹⁰ and 64 per cent in religion or belief discrimination claims¹⁹¹ across Great Britain. In Scotland, race discrimination claims have fallen 59 per cent.¹⁹²

135. On 11 June 2015, the UK Government announced the start of a review on the impact of the employment tribunal fees, which was due to be completed at the end of

¹⁸⁶ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', p. 83. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

¹⁸⁷ EHRC (2015), 'Legal aid reforms and women's access to justice' (EHRC shadow report to the UN Committee on the Elimination of Discrimination against Women: Follow up procedure), p. 13. Available at: <http://www.equalityhumanrights.com/en/publication/cedaw-shadow-report-legal-aid-reforms-and-womens-access-justice> [accessed: 21 April 2016].

¹⁸⁸ Ibid., p.14.

¹⁸⁹ Ministry of Justice (2015), 'Tribunals and Gender Recognition Statistics Quarterly: April to June 2015, Main tables (April to June 2015)'. Available at: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015> [accessed: 21 April 2016].

¹⁹⁰ From 1,089 to 624 cases.

¹⁹¹ From 220 to 79 cases.

¹⁹² From 32 to 13 cases. See: Ministry of Justice (2015), Tribunals and Gender Recognition Statistics Quarterly: April to June 2015, Annex C: Employment Tribunal Receipts Tables: Table C.4 – Total Number of Employment Tribunal Jurisdictional Complaints Received by Region, January 2012 to June 2015. Available at: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015> [accessed: 21 April 2016].

2015.¹⁹³ On 10 September 2015, the Under Secretary of State for Justice confirmed the 'review will seek to assess the effect fees have had including, so far as possible, any differential impact on people with protected characteristics and the types of case they bring'.¹⁹⁴ The results of this review had not been made public as of April 2016.

4.3 Access to justice for victims of domestic violence

136. In 'Socio-economic rights in the UK: List of Issues' the EHRC highlighted the changes to requirements for admissible evidence in cases of domestic violence set out in the Civil Legal Aid (Procedure) Regulations 2012.¹⁹⁵

137. Rights of Women challenged the lawfulness of the Regulations which limit the type of evidence that can be presented, but in January 2015 the High Court found the Regulations to be lawful.¹⁹⁶ In February 2016, Rights of Women successfully challenged this decision in the Court of Appeal, which ruled that this is invalid and does not cater for victims of domestic violence who have suffered from financial abuse.¹⁹⁷ A MoJ spokesperson has said the UK Government will 'carefully consider' the decision.¹⁹⁸

4.4 The residence test for civil legal aid

138. In 'Socio-economic rights in the UK', the EHRC noted UK Government plans to introduce a residence test for civil legal aid, to limit funding to people who are lawfully resident in the UK and who, at some point, have been lawfully resident for at least 12 months continuously. The EHRC noted that the test could discriminate

¹⁹³ Ministry of Justice (2015), Employment Tribunal Fees Post Implementation Review. Available at: <https://www.gov.uk/government/publications/employment-tribunal-fees-post-implementation-review> [accessed: 21 April 2016].

¹⁹⁴ Vara, S., (2015), Employment Tribunals Service: Fees and Charges: Written question – 9118, Parliamentary Questions (10 September 2015). Available at: <http://www.parliament.uk/written-questions-answers-statements/written-question/commons/2015-09-07/9118> [accessed: 21 April 2016].

¹⁹⁵ Available at: <http://www.legislation.gov.uk/ukxi/2012/3098/contents/made> [accessed: 21 April 2016].

¹⁹⁶ *R (oao Rights of Women) v Lord Chancellor* [2015] EWHC 35 (Admin).

¹⁹⁷ *R (Rights of Women) v Secretary of State for Justice* [2016] EWCA Civ 91.

¹⁹⁸ BBC, 2016. Domestic violence legal aid changes were 'invalid', *BBC Online*, [online] 18 February. Available at: <http://www.bbc.co.uk/news/uk-35605498> [accessed: 21 April 2016].

against certain non-UK nationals and amount to a violation of the right to a fair trial under the European Convention on Human Rights.¹⁹⁹

139. In 'Children's rights in the UK', the EHRC highlighted that some categories of vulnerable children might fail to satisfy the residence test, for example unaccompanied children who have not been granted limited leave to remain, and undocumented children. It also emphasised that the residence test may be contrary to the right of children to be heard in judicial proceedings, as they may not have the capacity to represent themselves effectively.²⁰⁰

140. On 18 April 2016 the Supreme Court decided that the proposed introduction of a residence test by secondary legislation²⁰¹ exceeded the power to make delegated legislation conferred by Section 9 of LASPO.²⁰² At the time of writing, the full judgment had not been published, but the Court did not consider it necessary to decide the issue of whether it was also unjustifiably discriminatory or in breach of the Human Rights Act 1998. The impact of this ruling is that such a residence test could only be introduced by primary legislation debated in Parliament. It is still possible that such legislation, even if introduced, may contravene the HRA.

¹⁹⁹ EHRC, 'Socio-economic rights in the UK: List of Issues', paragraphs 196-198. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

²⁰⁰ EHRC, 'Children's rights in the UK', paragraphs 35-43.

²⁰¹ The draft Legal Aid, Sentencing and Punishment of Offenders Act (Amendment of Schedule 1) Order 2014.

²⁰² *R (on the application of The Public Law Project) v Lord Chancellor*.

Section 5: Access to higher education – Article 13, List of Issues, paragraph 30

141. Education is devolved to the Scottish Government and Parliament, and the Welsh Government and National Assembly.

5.1 Children's right to education

142. In its submission to the Committee on the Rights of the Child, the EHRC sets out a number of issues related to school age education, including:²⁰³

- differing educational outcomes of children at school in the UK depending on gender, household income, ethnicity, whether a child has SEN or a disability, and whether a child is looked after by the State
- inclusive education for children with disabilities and those with SEN, including numbers of children with SEN in the pupil population, as well as changes brought about through the new Special Educational Needs and Disability Code of Practice in England
- the introduction of the Pupil Premium in England to raise the attainment of disadvantaged pupils
- the higher rates of school exclusions in the UK for pupils with SEN, those eligible for free school meals, and Gypsy, Roma and Traveller children
- identity-based bullying in schools of disabled children, those with SEN, and LGBT children in the UK
- the non-statutory status of Personal Social and Health Education in England
- the prevalence of in-year admissions and the disproportionate number of in-year movers who are eligible for the Pupil Premium in England or have SEN, and

²⁰³ EHRC (2015), 'Children's rights in the UK', pp. 45-64 and EHRC (2016) 'Updated submission: Children's Rights in the UK', pp. 17-22 (forthcoming).

- the closure of the Education Maintenance Allowance and its replacement with the 16 to 19 Bursary Fund in England.

143. The EHRC recognises that issues relating to school-age education have an impact on people's access to higher education. In this submission to UN CESCR, we focus on access to higher education.

5.2 Tuition fees

144. In 'Socio-economic rights in the UK: List of Issues' the EHRC set out the changes in tuition fees for higher education since 2009, including the increase by the UK Government in 2012 which led to the average tuition fee reaching around £8,000.²⁰⁴

145. In 2016/17, the vast majority of Higher Education Institutions (HEIs) will charge the maximum fee of £9,000 for some or all of their courses and the average full-time fee for new students (before waivers) will be around £8,781.²⁰⁵ In Wales, HEIs are able to charge the same level of tuition fees, but the Welsh Government has introduced different support arrangements to offset the increase. These include making a tuition fee grant available to any student normally resident in Wales but who studies anywhere in the UK, in order to cover increases in fees beyond the level set in 2011/12.²⁰⁶

146. Despite the increase in tuition fees, in 2014 the University and Colleges Admissions Services (UCAS) saw the largest recorded increase in university entry rates among young people living in the most disadvantaged 20 per cent of areas. This narrowed the gap with those from more advantaged areas.²⁰⁷

²⁰⁴ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', pp. 71-2. Available at: <http://www.equalityhumanrights.com/en/sites/default/files/uploads/Human-Rights-International/ICESCR%20-%20FINAL%2003-11-2015.pdf> [accessed: 21 April 2016].

²⁰⁵ Office for Fair Access (2015), Access agreements for 2016-17: key statistics and analysis. Available at: <https://www.offa.org.uk/publications/analysis-data-and-progress-reports/> [accessed: 21 April 2016].

²⁰⁶ Review of Higher Education Funding and Student Finance Arrangements in Wales 2105), Interim report, p. 10. Available at: <http://gov.wales/topics/educationandskills/highereducation/review-of-he-funding-and-student-finance-arrangements/?lang=en> [accessed: 21 April 2016].

²⁰⁷ University and Colleges Admissions Services (2014), 'UCAS Undergraduate 2014 End of Cycle Report'. Available at: <https://www.ucas.com/corporate/data-and-analysis/analysis-reports> [accessed: 21 April 2016].

147. In November 2015, BIS launched a consultation on its proposals to reshape the higher education system in England.²⁰⁸ These proposals include the introduction of a Teaching Excellence Framework (TEF), whereby HEIs that satisfy the requirements of the TEF will be able to further increase their tuition fees. The equality impact assessment for these proposals concluded that the risk that students with protected characteristics would be deterred from participating in higher education because of higher tuition fees was small and would be 'offset by the other benefits TEF will bring to disadvantaged groups and the student population as a whole'.²⁰⁹

148. The EHRC has expressed concerns in relation to this analysis, partly because increases in university fees could still affect university participation, despite the concurrent increases in university entry rates from people in low income areas.²¹⁰ In addition to this, the Independent Commission on Fees linked the 2012 tuition fee increase with a significant fall in mature and part-time student numbers.²¹¹ Women and parents living with dependent children are particularly highly represented among these students.²¹²

5.3 Changes to student finance

149. In its Autumn 2015 Spending Review, the Treasury announced a number of changes to the support that students in England can receive to fund their higher

²⁰⁸ BIS (2015), Fulfilling our potential: teaching excellence, social mobility and student choice. Available at: <https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice> [accessed: 21 April 2016].

²⁰⁹ Ibid., p. 85.

²¹⁰ EHRC (2016), Response to Department for Business, Innovation & Skills (BIS): Fulfilling our potential: teaching excellence, social mobility and student choice, p. 5. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/response-bis-fulfilling-our-potential-teaching-excellence-social-mobility-and-student-choice> [accessed: 21 April 2016].

²¹¹ Independent Commission on Fees (2015), Final Report. Available at: <http://www.suttontrust.com/wp-content/uploads/2015/07/ICOF-REPORT-2015.pdf> [accessed: 21 April 2016].

²¹² Universities UK (2013), 'The power of part-time: review of part-time and mature higher education'. Available at: <http://www.universitiesuk.ac.uk/highereducation/Pages/UUKreviewofparttimeeducation.aspx#.Vs7akP5yaAg> [accessed: 21 April 2016].

education studies.²¹³ These included some positive changes, such as the eligibility of part-time students for maintenance loans, and the introduction of loans for Masters programmes from September 2016.

150. Alongside these changes, the Treasury announced that:

- non-repayable maintenance grants, which were previously given to students from lower income families, will be discontinued and replaced by loans which are repaid once the graduate is earning more than £21,000 a year. These changes will mean that 'more money is loaned, both per student and overall, and will increase the amount that is repaid by middle and lower earning graduates.'²¹⁴, and
- the student opportunity fund provided to HEIs to help recruit and support students from under-represented groups, including disadvantaged and disabled students, was to be reduced by 2019-20.²¹⁵

151. BIS' equality analysis of these changes concluded that they were likely to have a disproportionately adverse impact on the participation and attainment of female, single parent, disabled, mature and ethnic minority students because these groups are more likely to be debt averse. It also concluded that Muslim students would be adversely impacted as their religion prevents them from taking out an interest-bearing loan.²¹⁶ To mitigate the impact on Muslim students, the UK Government has designed a Sharia-compliant student finance product.

5.4 Equal access to higher education

152. The UK Government has committed to doubling the entry rate of groups with low participation rates by 2020 and to a 20 per cent increase in the number of ethnic

²¹³ HM Treasury (2015), Spending review and autumn statement 2015. Available at <https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents> [accessed: 21 April 2016].

²¹⁴ House of Commons Library (2016), Briefing Paper number 1079: Student Loan Statistics, p.3. Available at: www.parliament.uk/briefing-papers/sn01079.pdf [accessed: 21 April 2016].

²¹⁵ HM Treasury (2015), Spending review and autumn statement 2015. Available at <https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents> [accessed: 21 April 2016].

²¹⁶ BIS (2105), Higher Education: Student Finance Equality Analysis – The Education (Student Support)(Amendment) Regulations 2015, p. 83. Available at: <https://www.gov.uk/government/publications/higher-education-student-support-regulations-2015-equality-analysis> [accessed: 21 April 2016].

minority students going to university by 2020. It has also pledged to increase the number of corresponding improvements in these students' completion rates and progression into work.²¹⁷ BIS proposals to reshape the higher education landscape include plans to create a new Office for Students (OfS) with powers to set targets for HEIs to increase equal access to higher education and to refuse approval of an access agreement when HEIs fail to achieve their targets without good reason.²¹⁸ The EHRC welcomes such goals and supports this proposal.

153. The EHRC remains concerned that differences in access, participation and success in higher education persist. It recommends that the UK Government should consider the following as part of its strategy to improve equal access to higher education for all:

- White school leavers are less likely to go on to study at a HEI than those from ethnic minorities²¹⁹
- pupils from some ethnic minorities, particularly Black students, are less likely than others to study at a higher-ranked HEI²²⁰
- disabled people, including those with learning difficulties, are less likely to go onto universities than non-disabled people,²²¹ and forthcoming changes to the Disabled Students' Allowances could have a negative impact on how disabled students access and succeed in higher education²²²

²¹⁷ BIS. 2015. Speech. *Higher education: fulfilling our potential*. Available at: <https://www.gov.uk/government/speeches/higher-education-fulfilling-our-potential> [accessed: 21 April 2016].

²¹⁸ BIS (2015), *Fulfilling our potential: teaching excellence, social mobility and student choice*, p. 38. Available at: <https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice> [accessed: 21 April 2016]. Universities that want to charge higher fees must have an access agreement in place, approved by the Director of Fair Access, which sets out the access measures it intends to put in place, such as outreach work and financial support. See: <https://www.offa.org.uk/access-agreements/> [accessed: 21 April 2016].

Access agreements are mandatory agreements between HEIs and the Office for Fair Access (OFFA), whereby HEIs that wish to charge more than the basic fee level (£6,000 a year for full-time courses and £4,500 for part-time courses) need to agree a plan including targets and milestones with OFFA. These targets would focus on attracting and retaining students with low participation rates, including students with disabilities.

²¹⁹ EHRC (2015), 'Is Britain Fairer?' Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/great-britain-report> [accessed: 21 April 2016].

²²⁰ Ibid.

²²¹ Department for Education (2015), 'Destinations of key stage 4 and key stage 5 students, 2012/13'. Available at: <https://www.gov.uk/government/statistics/destinations-of-key-stage-4-and-key-stage-5-pupils-2012-to-2013> [accessed: 21 April 2016].

²²² EHRC (2015), *Response to the Department for Business, Innovation & Skills (BIS): Consultation on targeting funding for disabled students in higher education from 2016/17 onwards*. Available at:

- students who have been in care are severely under-represented in higher education²²³
- the number of mature students continues to decline and now stands at just 29.5 per cent of all students compared to 40.5 per cent in 2003/04,²²⁴ and
- young adult carers (who are mainly women) are more likely not to finish their course of study.²²⁵

154. In Wales, an independent review into higher education highlighted the strong link between socio-economic disadvantage and university participation, much of which is accounted for by previous educational attainment.²²⁶ The Higher Education Funding Council for Wales has made recommendations on widening access to higher education and has consulted on how to achieve this.²²⁷

155. In February 2015, the UK Government announced its intention to legislate to introduce a transparency duty on universities under which they will be required to routinely 'publish admissions and retention data by gender, ethnic background and socio-economic class.'²²⁸

156. The specific duties under the PSED already require public authorities such as universities to publish equality information every year in relation to their staff and students, disaggregated by protected characteristics, including gender and race.

<http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses>
[accessed: 21 April 2016].

²²³ Department for Education (2014), Children looked after in England including adoption: 2013 to 2014, national tables SFR36/2014. Available at: <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption--2> [accessed: 21 April 2016].

²²⁴ Equality Challenge Unit. 2015. *Equality in higher education: latest reports highlight gender inequality and importance of Disabled Students' Allowance*. Available at: <http://www.ecu.ac.uk/news/equality-higher-education-latest-reports-highlight-gender-inequality-importance-disabled-students-allowance/> [accessed: 21 April 2016].

²²⁵ Carers Trust. 2014. *Research shows young adult carers struggling to cope in higher education*. Available at: <https://www.carers.org/news/research-shows-young-adult-carers-struggling-cope-higher-education> [accessed: 21 April 2016].

²²⁶ Review of Higher Education Funding and Student Finance Arrangements in Wales (2015), Interim report, p. 15-16. Available at: <http://gov.wales/topics/educationandskills/highereducation/review-of-he-funding-and-student-finance-arrangements/?lang=en> [accessed: 21 April 2016].

²²⁷ EHRC (2015), 'Is Britain Fairer?', Domain E: Education, p. 119. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/britain-fairer-supporting-evidence> [accessed: 21 April 2016].

²²⁸ Prime Minister's Office. 2016. Press release. *PM: Time to tear down the barriers at elite universities*. Available at <https://www.gov.uk/government/news/pm-time-to-tear-down-the-barriers-at-elite-universities> [accessed: 21 April 2015].

Currently there is no requirement in the PSED for public authorities to publish information disaggregated by 'socio-economic class'.

157. The EHRC welcomes the proposed transparency duty as it may provide more clarity on the information universities should publish under the PSED. While it is not clear how 'socio-economic class' will be measured in the new duty, an additional focus on individuals from lower household income brackets would help universities address student underrepresentation and any differences in outcomes more effectively.

5.5 Disabled Students' Allowance

158. In 'Socio-economic rights in the UK: List of Issues' the EHRC raised a concern about the UK Government proposal to reduce some of the support offered to English students with disabilities under the Disabled Students' Allowance, which provides up to £10,362 per year to students on designated courses.²²⁹

159. In July 2015, BIS launched a consultation on the proposal.²³⁰ The EHRC responded to this consultation, highlighting concerns with the rationale for the proposed changes and their potential negative impact on how disabled people would access, participate and succeed in higher education under the new system. The EHRC made a number of suggestions, should the proposed changes go ahead, including for BIS to:

- work with others to ensure the continuity of reasonable adjustments so disabled people have the same opportunities to succeed in the education system than non-disabled people
- produce accessible guidance so disabled students are clear on what reasonable adjustments they can expect from HEIs, from governments and others, and the process for getting what they need
- ensure that when disabled students disagree with their HEIs on what reasonable adjustments they need, they can access an efficient and timely dispute system, and

²²⁹ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', p. 73. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

²³⁰ BIS (2015), Consultation on targeting funding for disabled students in higher education from 2016/17 onwards. Available at: <https://www.gov.uk/government/consultations/disabled-students-in-higher-education-funding-proposals> [accessed: 21 April 2016].

- monitor the actual impact of the proposed changes.²³¹

160. BIS published its response to the consultation in December 2015. This set out its intention to implement most of the changes proposed, as well as an updated equality analysis.²³² The EHRC welcomes BIS' commitment to address many of our concerns, including producing guidance for disabled students on how reasonable adjustments will be made, monitoring the operation of the dispute resolution mechanisms in place, and encouraging HEIs to publish data on their provision for disabled students. We will be monitoring how these commitments are realised in practice.²³³

²³¹ EHRC (2015), Response to Department for Business, Innovation & Skills (BIS): Consultation on targeting funding for disabled students in higher education from 2016/17 onwards. Available at <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses> [accessed: 21 April 2016].

²³² BIS (2015), Consultation on targeting funding for disabled students in higher education from 2016 to 2017 onwards - government response. Available at: <https://www.gov.uk/government/consultations/disabled-students-in-higher-education-funding-proposals> [accessed: 21 April 2016].

²³³ BIS (2015), Consultation on targeting funding for disabled students in higher education from 2016 to 2017 onwards - equality analysis. Available at <https://www.gov.uk/government/consultations/disabled-students-in-higher-education-funding-proposals> [accessed: 21 April 2016].

Section 6: Health – Article 12, List of Issues, paragraphs 26 and 27

161. Health and social care are matters devolved to the Scottish Government and Parliament, and the Welsh Government and National Assembly.

162. In 'Socio-economic rights in the UK: List of Issues' the EHRC addressed a number of health-related issues including:

- new duties to reduce inequalities in access to healthcare in England
- the introduction of the Equality Delivery System in England
- access to healthcare for people with disabilities in the UK, including cruel, inhuman or degrading treatment in healthcare settings
- older people's right to health in the UK
- access to healthcare by other vulnerable groups in the UK, including Gypsies and Travellers, asylum seekers, refugees, and transgender people
- healthcare for children and adults with mental health problems, and
- violence against women and girls, and the right to health.²³⁴

6.1 Access to mental health care

163. In 'Socio-economic rights in the UK: List of Issues' the EHRC noted the gaps in mental health provision and the overall funding cuts to mental health services. More recent analysis by The King's Fund has found that around 40 per cent of mental health trusts experienced reductions in income in 2013/14 and 2014/15.²³⁵ The King's Fund review set out a range of evidence relating to: funding cuts; poor quality care; the negative impact on safety; occupancy rates of; beds in inpatient facilities

²³⁴ EHRC (2015), 'Socio-economic rights in the UK: List of Issues', pp. 36-53. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

²³⁵ The Kings Fund (2015), 'Mental health under pressure'. Available at: <http://www.kingsfund.org.uk/publications/mental-health-under-pressure> [accessed: 21 April 2016].

above recommended levels; insufficient support from community services; and a reduction in the number of experienced nursing staff.²³⁶

164. Another recent analysis by the independent Mental Health Taskforce emphasised underinvestment in mental health services across the NHS and made a recommendation for an extra £1 billion investment in mental health services in 2021.²³⁷ The Taskforce set out a number of priority actions by 2021, including:

- reducing and eliminating out of area placements for acute care and expanding community-based services
- enhancing integration of mental and physical health care, for example by improving access to specialist mental health care during the perinatal period
- increasing access to psychological therapies
- increasing young people's access to high quality mental health care, and
- improving coordination of UK Government bodies that deal with people in the Criminal Justice System who experience mental health problems.²³⁸

165. In Wales, similar concerns were identified by EHRC. These included:²³⁹

- only a quarter of all those with poor mental health receive treatment²⁴⁰
- the number of daily available NHS beds for mental illness fell by 11 per cent between 2010/11 and 2013/14, and²⁴¹
- in 2014 demand for services is said to have increased by 100 per cent over the previous 12 months, yet public spending on Child and Adolescent Mental Health Services (CAMHS) has remained static over the period.

²³⁶ Ibid.

²³⁷ The Independent Mental Health Taskforce (2016), *The Five Year Forward View for Mental Health*. Available at: <https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf> [accessed: 21 April 2016].

²³⁸ The Independent Mental Health Taskforce (2016), *The Five Year Forward View Mental Health Taskforce: Public Engagement Findings*, pp. 11-18. Available at: <https://www.england.nhs.uk/mentalhealth/wp-content/uploads/sites/29/2015/09/fyv-mental-hlth-taskforce.pdf> [accessed: 21 April 2016].

²³⁹ EHRC (2015), 'Is Wales Fairer?', p. 21. Available at: <http://www.equalityhumanrights.com/en/publication-download/wales-fairer-report> [accessed: 21 April 2016].

²⁴⁰ Centre for Economic Performance (2012), *How mental illness loses out in the NHS*. Available at: <http://cep.lse.ac.uk/pubs/download/special/cepsp26.pdf> [accessed: 21 April 2016].

²⁴¹ Welsh Government (2015e), *Health Statistics Wales 2015*, data tables for Chapter 10: NHS hospital statistics for people with a mental illness, Table 10.1. Available at: <http://gov.wales/statistics-and-research/health-statistics-wales/?lang=en> [accessed: 21 April 2016].

166. As a result, the Welsh Government has announced a £7.6m annual investment in CAMHS from 2015-16 to improve provision and change support services.

6.2 Neglect of adults in the social care system

167. In 'Socio-economic rights in the UK: List of Issues' the EHRC welcomed the adoption of the Fundamental Standards contained in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, applicable to England. We also welcomed changes to the Care Quality Commission's inspection approach.²⁴² The report emphasised the failings in treatment of patients with learning disabilities in hospital assessment and treatment units. It also highlighted evidence of serious, systematic threats to the dignity, autonomy and safety of older people.²⁴³

168. Section 1 of the Care Act 2014 sets out the general duty of local authorities in England to promote an individual's well-being. 'Well-being includes personal dignity, physical and mental health, emotional well-being, and protection from abuse and neglect. If the aims of the Well-being Principle are delivered in practice, it should lead to better protection of the human rights of those receiving adult social care services that are publicly funded or arranged.

169. However, delivering on the aims of the Care Act 2014, including its Well-being Principle, requires adequate resourcing. A survey by the Association of Directors of Adult Social Services indicates a £1.1bn shortfall in funding for local authority adult social care in 2015-16.²⁴⁴

170. The risk of abuse or neglect is a matter of particular concern within the health and social care sector. The Safeguarding Adults Return recorded 103,900 safeguarding referrals from April 2014 to March 2015.²⁴⁵ For referrals that concluded

²⁴² EHRC (2015), 'Socio-economic rights in the UK: List of Issues', p. 37. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 21 April 2016].

²⁴³ Ibid. pp. 401.

²⁴⁴ ADASS (2015), 'ADASS Budget Survey 2015'. Available at: <https://www.adass.org.uk/media/4340/adass-budget-survey-2015-report-final-v2.pdf> [accessed: 21 April 2016].

²⁴⁵ Safeguarding Adults Return compiles data from local authorities on allegations of abuse relating to adults at risk, including adults accommodated in institutional settings and those using domiciliary care services. See: Health and Social Care Information Centre (2015), Safeguarding Adults Return: Annual Report, England 2014-15. Available at: <http://www.hscic.gov.uk/catalogue/PUB18869/sar-1415-rep.pdf> [accessed: 21 April 2016].

during this year, the most common type of risk was neglect and acts of omission, which accounted for 32 per cent of allegations. This was followed by physical abuse (27 per cent). The alleged abuse most frequently occurred in the home of the adult at risk (43 per cent of allegations) or in a care home (36 per cent of allegations). Social care employees were the source of risk in 36 per cent of cases.

171. In Wales, some progress has been made in arrangements to protect vulnerable adults from abuse, but significant concerns remain about the treatment and support provided in some care settings.²⁴⁶ In 2013/14, 24 per cent of care and nursing homes for older people did not meet the inspectorate's requirements.²⁴⁷ The Older People's Commissioner found that older people living in care homes often became institutionalised, did not have their basic health needs met, were unable to access specialist services, and their emotional needs were not fully recognised.²⁴⁸

6.3 Preventing deaths in detention of adults with mental health conditions

172. In 'Socio-economic rights in the UK: List of Issues' the EHRC highlighted the findings from its inquiry into non-natural deaths of adults with mental health conditions detained in prisons, police cells and hospitals. We highlighted a number of shortcomings in the implementation of the UK's obligations to protect people in detention whose lives are at risk, including from suicide. For example:

- inadequate risk assessments and lack of beds in psychiatric hospitals
- difficulties in accessing investigations into non-natural deaths in psychiatric hospitals and concerns about the quality of these investigations, and
- inconsistent provision of mental health care, the use of segregation, and insufficient involvement of family members in the treatment of people in prison with mental health conditions.

²⁴⁶ EHRC (2015), 'Is Wales Fairer?', p. 23. Available at: <http://www.equalityhumanrights.com/en/wales-fairer> [accessed: 21 April 2016].

²⁴⁷ Care and Social Services Inspectorate Wales (2014a), 'Chief Inspector's Annual Report: Improving Care, Childcare and Social Services in Wales 2013-2014'. Available at: <http://cssiw.org.uk/docs/cssiw/report/150304annualreport3en.pdf> [accessed: 21 April 2016].

²⁴⁸ Older People's Commission (2014), 'A Place to Call Home? A Review into the Quality of Life and Care of Older People living in Care Homes in Wales'. Available at: http://www.olderpeoplewales.com/Libraries/Uploads/A_Place_to_Call_Home_-_A_Review_into_the_Quality_of_Life_and_Care_of_Older_People_living_in_Care_Homes_in_Wales.sflb.ashx [accessed: 21 April 2016].

173. These shortcomings impact on the right to health of detained people and make it difficult for the UK Government to deal effectively with the causes of suicide in detention, as recommended by UN CESCR.

174. In March 2016, the EHRC published its follow-up report to the inquiry in which it highlighted a number of positive changes, including:²⁴⁹

- the number of non-natural deaths of detained patients is continuing to decrease²⁵⁰
- the use of police cells as a place of safety for people experiencing a mental health crisis has fallen and a proposed change in the Policing and Crime Bill will prohibit the use of police cells as places of safety for those under 18²⁵¹
- improvements in prisons, including the introduction of initial assessments of prisoners' mental health, entry-level training for prison officers, and peer support for prisoners,²⁵² and
- the announcement to establish medical examiners who will review the causes of death of patients receiving healthcare services as of April 2018.²⁵³

175. However, a number of concerns were reaffirmed in the progress report, such as:

- the increase in the number of non-natural deaths in prisons²⁵⁴
- the variable quality of investigations into non-natural deaths of detained patients,²⁵⁵ and
- the continued variability of the identification and treatment of mental health issues in prisons and the need for data collection to be strengthened.²⁵⁶

²⁴⁹ EHRC (2016), 'Preventing deaths in detention of adults with mental health conditions: progress review'. Available at: <http://www.equalityhumanrights.com/en/inquiries-and-investigations/preventing-deaths-detention-adults-mental-health-conditions/preventing> [accessed: 21 April 2016].

²⁵⁰ Ibid., p. 9

²⁵¹ Ibid., p. 23

²⁵² Ibid., pp. 18-19

²⁵³ Ibid., p. 25

²⁵⁴ Ibid., p. 9

²⁵⁵ Ibid., p. 9

²⁵⁶ EHRC (2016), 'Preventing deaths in detention of adults with mental health conditions: progress review', pp. 11 and 18. Available at: <http://www.equalityhumanrights.com/en/inquiries-and-investigations/preventing-deaths-detention-adults-mental-health-conditions/preventing> [accessed: 21 April 2016].

Annex: Equality and Human Rights Commission recommendations to improve implementation of the International Covenant on Economic, Social and Cultural Rights in the UK

Recommendation 1: National Action Plan for Human Rights

The Equality and Human Rights Commission (EHRC) recommends that the UK Government adopt a National Action Plan for Human Rights. This would consist of concrete steps to implement recommendations of UN treaty bodies and human rights mechanisms, including the concluding observations of the UN Committee on Economic, Social and Cultural Rights (UN CESCR).

This would enable the UK Government to:

- operate far more strategically, ensuring its efforts were streamlined and better co-ordinated across the UK Parliament and at a local level
- facilitate the sharing of best practice initiatives
- improve the way it measures and evidences human rights progress on the ground, and
- improve coordination, preparation and timely submission of State reports to the Human Rights Council and treaty bodies.

Recommendation 2: Enhancing the status of ICESCR in domestic law in the UK – Article 2

The EHRC recommends the UK Government considers and publishes options for enhancing the status of the International Covenant on Economic, Social and Cultural

Rights (ICESCR) in domestic law. This would be with a view to taking steps - to the maximum of the State's available resources - to progressively, give full effect to all of the provisions in ICESCR, in line with Article 2 (1).. This consideration should form part of a wide-ranging consultation on proposals for a Bill of Rights, which seeks the views of people in vulnerable situations who do not enjoy equal access to economic, social and cultural rights (ESCR) or who have been disproportionately affected by regressive measures taken by the UK Government since it was last reviewed by UN CESCR. Options for consideration should include:

- implementing s1 of the Equality Act 2010 so that certain public authorities have a duty to consider the desirability of reducing socio-economic inequality when taking strategic decisions on exercising their functions
- instruments such as the Rights of Children and Young Persons (Wales) Measure 2011 and the Children and Young People (Scotland) Act 2014, which enhance the status of the Convention on the Rights of the Child (CRC) in Scotland and Wales
- access to a domestic remedy for people who allege their rights under ICESCR have been breached
- a mechanism for scrutiny of policy, legislation and budgetary measures to ensure compliance with ICESCR, and
- robust mechanisms to hold decision-makers to account when it has been demonstrated that their actions or omissions have breached ICESCR.

Recommendation 3: Financial decision-making and the Public Sector Equality Duty (PSED) in the UK – Articles 2, 9 and 11

With a view to using the maximum available resources to realise progressively the rights of people within the UK under Article 2 ICESCR, taken in conjunction with the rights to social security and an adequate standard of living under Article 9 and 11, the EHRC recommends that the UK Government implement the recommendations contained in our 'Future Fair Financial Decision Making' report. These include:

- taking steps to improve the coverage of evidence and analysis in the Equalities Impact Statement, published alongside Spending Reviews
- reviewing its approach to impact assessment by extending its analysis to include the cumulative impact of decisions on people sharing different protected characteristics, and

- monitoring the impact of Spending Review measures in order to better understand where mitigations are needed and to inform the next round of spending decisions.

Recommendation 4: Impact of measures in the Welfare Reform and Work Act 2016 on ESCR in the UK – Articles 2, 9 and 11

In order to ensure that measures in the Welfare Reform and Work 2016 Act do not have adverse impacts on the implementation of Articles 2, 9 and 11 ICESCR, the UK Government should:

- conduct a human rights impact assessment which considers and identifies impacts on Article 9 and 11 rights, in particular for potentially vulnerable groups including children. Where adverse impacts are identified, the UK Government should set out mitigating actions and justify any regressive measures by demonstrating that they are temporary, necessary, proportionate, non-discriminatory and do not undercut a core minimum level of protection of the rights under ICESCR
- fully consider the impact of the further reduction in the household benefit cap on children's right to an adequate standard of living. Where an adverse impact is identified, the UK Government should set out mitigating actions and justify any regressive measures, and
- fully consider the impact on living standards of families living in poverty of restricting the entitlement to Child Tax Credits and the child element of Universal Credit to the first two children in a household. There should be a particular focus on ethnic minority families and those who hold particular religious beliefs. Where adverse impacts are identified, the UK Government should set out mitigating actions.

Recommendation 5: Impact of social security reforms on people with disabilities in the UK – Articles 9 and 11

In order to realise progressively the right to social security and the right to an adequate standard of living of people with disabilities, in line with the UK's obligations under Articles 9 and 11 ICESCR, the UK Government should:

- collect and publish data, disaggregated by protected characteristic, on the reasons for the high rates of successful challenges to Work Capability Assessments
- monitor the impact of the closure of the Independent Living Fund (ILF) on people with disabilities, including:
 - the impacts of the different approaches taken by the UK, Scottish and Welsh Governments to providing support for independent living
 - whether those who previously received support from the ILF are moving into residential care due to the inability of local authorities in England to fund the level of support they need to live independently, and
 - whether support that previously enabled people with disabilities to participate in education, training or employment has been withdrawn
- consider the potential impacts of reductions to social security entitlements brought about through Universal Credit, including the impact on families with disabled children who receive Disability Living Allowance, severely disabled adults who live on their own or with dependent children, and disabled adults in work. Where adverse impacts are identified, the UK Government should set out mitigating actions and justify any regressive measures by demonstrating that they are temporary, necessary, proportionate, non-discriminatory and that they do not undercut a core minimum level of protection
- set out plans for how it will conduct a comprehensive evaluation of the Personal Independence Payment, including by addressing the impact that it has had on people with mental health conditions or learning disabilities
- remove the proposed changes to the rate of Employment Support Allowance in the Welfare Reform and Work Act 2016, and
- delay implementation of the changes to Employment Support Allowance set out in the Welfare Reform and Work Act 2016 until a full impact assessment of these measures has been carried out. The impact assessment should address:
 - the potential impacts on those affected by the measures in relation to their physical and mental health, standard of living and their ability to return to work, and
 - how the three aims of the public sector equality duty have been considered, and in particular how the proposals are likely to impact on people with different protected characteristics.

Recommendation 6: Impact of social security reforms on women in the UK – Articles 9 and 11

In light of the UK Government's announcement to further reduce the household benefit cap, and in order to guarantee the protection of women's right to social security and an adequate standard of living under Articles 9 and 11 ICESCR, the EHRC recommends that the UK Government:

- conducts a further equality impact assessment, which fully considers the effects of this additional reduction to the benefits received by women, and sets out comprehensive strategies to mitigate any projected disproportionate and unjustified impacts
- further analyses how people respond to the household benefit cap, in particular whether it prevents individuals from meeting their basic needs, including when it is further reduced, and
- continues to monitor and report on the roll-out of Universal Credit and the impact that it is having on women, in particular whether it has resulted in reduced independent income received by women in poorer households.

Recommendation 7: Impact of social security reforms on children in the UK – Articles 9 and 11

In order to guarantee the protection of children's right to social security and an adequate standard of living under Articles 9 and 11 ICESCR, the EHRC recommends that the UK Government:

- conducts a cumulative impact assessment of the full range of social security reforms introduced between 2010 and 2015 on children. This would include those who have a disability or are an ethnic minority, as necessary to determine how the UK Government is acting in compliance with Article 11 ICESCR, as well as Articles 3(1), 26 and 27 CRC.

Recommendation 8: Income poverty and child poverty in the UK – Article 11

In order to realise progressively the right of children to an adequate standard of living under Article 11 ICESCR, the UK Government should take steps to:

- ensure that any new measures of child poverty address relative and absolute income poverty, and material deprivation, as well as taking into account causal risks that contribute to the perpetuation of poverty, and
- in line with recommendations made by the Office of the Children's Commissioner (England) and the Social Mobility and Child Poverty Commission, make sure that responses to child poverty address the immediate effects of poverty on children, as well as addressing work poverty and the improvement of conditions of work.

Recommendation 9: Food poverty in the UK – Article 11

With a view to respecting, protecting and fulfilling the right to adequate food as part of the right to an adequate standard of living under Article 11 ICESCR, the EHRC considers the UK Government should:

- improve data collection, and develop robust indicators to establish and monitor the extent of food poverty across the UK. These should consider the causal links between UK Government policies and any increase in food bank use, and
- develop a comprehensive strategy for tackling food poverty in the UK, which includes specific provisions to address food poverty among children, including consideration of the universal provision of free school meals in primary schools in England.

Recommendation 10: The right to adequate housing in England– Article 11

In order to guarantee the right to adequate housing for everyone, as protected under Article 11 ICESCR, the UK Government should:

- examine the causes for the disparities in terms of different ethnic groups living in substandard housing, and those in terms of age and ethnicity with regard to overcrowded housing, so that it can develop a strategy to address them in an effective way
- implement the EHRC's recommendations from its response to the Department for Communities and Local Government's consultation on 'Ensuring Fairness in the Planning System' to:
 - substitute the current Traveller definition in the Planning Policy for Traveller Sites for the more inclusive one in the Housing Act 2004, and

- reintroduce the duty on local authorities to provide sites for Gypsies and Travellers, as was previously required under the Caravan Sites Act 1968 and as is required in Wales under the Housing (Wales) Act 2014
- work with local authorities to ensure that they avoid unlawful discrimination against Gypsies and Travellers, and that suitable provision is in place to meet their reasonable housing needs
- implement the recommendation of the Joint Committee on Human Rights to work with local authorities to collect and monitor data about the number of beds needed in refuges to meet the need of domestic violence victims, and ensure appropriate funding and provision, including for those with disabilities.
- minimise the number of households placed in temporary accommodation outside their local authority's area, and ensure that adequate funding is available to local authorities to enable them to implement the Gold Standard Initiative to prevent homelessness, and
- ensure that a full range of affordable housing is built in England, taking into account the implications of broadening the definition of affordable housing in national planning policy on households containing women, a person aged over 40 and a disabled person, and ensure that small developers are not exempt from the need to provide affordable housing.

Recommendation 11: The right to adequate housing in Wales - Article 11

In order to better fulfil the right to adequate housing, the EHRC recommends that the Welsh Government responds to the challenge identified in 'Is Wales Fairer?' to improve living conditions in cohesive communities by:

- reducing poverty, especially among children, disabled people and ethnic minorities, and
- reducing homelessness, especially for people fleeing domestic abuse and those with poor mental health or learning disabilities.

Recommendation 12: The right to the highest attainable standard of health – legal and regulatory framework in England – Article 12

In order to improve protections for the right to the enjoyment of the highest attainable standard of physical and mental health, as protected by Article 12 ICESCR, the UK Government should:

- ensure that NHS England and Clinical Commissioning Groups collect sufficient data, disaggregated by protected characteristic, in order to populate the NHS Outcomes Framework and thereby identify inequalities in health outcomes for particular groups
- monitor the application of the Equality Delivery System 2 carefully to ensure it does not affect compliance with the PSED, and
- include a reference in the Fundamental Standards in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 to equality and human rights obligations under the Equality Act 2010, and the European Convention on Human Rights and UN treaties, specifically Article 12 ICESCR.

Recommendation 13: Healthcare of people with disabilities in England – Article 12

In order to guarantee access to healthcare on a non-discriminatory basis for people with disabilities, in line with Article 12 ICESCR, the UK Government should:

- provide an update on the steps taken to ensure the provision of information about health services in accessible and appropriate formats, on the availability of sign language interpreters, lip speakers and palantypists, and the steps being taken to increase availability
- demonstrate its plans for ensuring growth in high quality community services for people with learning disabilities as an alternative to treatment in large NHS mental health hospitals
- improve data collection on the population with learning disabilities so that their health needs can be met more effectively
- monitor the impact of the reductions in social care funding by local authorities on adults who need social care support. If adverse impacts are identified, the UK Government should set out ways to mitigate these impacts, and

- monitor the effectiveness of the adult safeguarding procedures of local authorities and the Care Quality Commission in protecting adults from abuse and neglect.

Recommendation 14: Healthcare of older people in England and Wales – Article 12

In order to ensure older people's dignity is protected and respected, and to improve compliance with Article 12 ICESCR and UN CESCR General Comment 14, the EHRC recommends that the UK Government works with local authorities in England to implement the findings of the EHRC's Home Care Inquiry and to ensure home care providers comply with the Human Rights Act 1998.

The EHRC recommends that the Welsh Government responds to the challenge identified in 'Is Wales Fairer?' to prevent abuse, neglect and ill-treatment of children and older people in hospitals and care homes.

Recommendation 15: Access to healthcare by other vulnerable groups in England – Article 12

In order to guarantee the right of everyone to the highest attainable standard of mental and physical health in line with Article 12 ICESCR, the EHRC recommends that the UK Government restate its commitment to ensuring that healthcare is accessible to all in the UK without discrimination. The EHRC also recommends that it demonstrates the steps it has taken to improve health outcomes for Gypsies and Travellers, refugees, asylum seekers and migrants, and transgender people, in particular by:

- facilitating their registration at GPs
- collecting and maintaining data on their health outcomes and access to health services, and
- ensuring that healthcare professionals receive the necessary training in order to be able to offer them appropriate and effective care.

Recommendation 16: Preventing deaths in detention of adults with mental health conditions – Article 12

In order to deal effectively with the causes of suicide, as recommended by CESCR, and to protect the right to health of prisoners, as required by Article 12 ICESCR, the UK Government should implement the recommendations of the EHRC's initial inquiry and progress review on preventing deaths in detention of adults with mental health conditions, in particular by:

- conducting a review into whether independent and high quality investigations are being carried out into non-natural deaths of patients in psychiatric hospitals
- expanding the remit of the newly established Healthcare Safety Investigation Branch to incorporate an oversight function of independent investigations into non-natural deaths of detained patients
- putting in place additional measures to address the increasing number of non-natural deaths of people in prisons, including by:
 - improving access to specialist mental healthcare
 - routinely publishing data on the use of restraint
 - refraining from using segregation for prisoners with mental health conditions, unless there is a clearly defined exceptional circumstance, and
 - collecting data on the number of prisoners with mental health conditions
- adopting the EHRC's Human Rights Framework as a practical tool to reduce non-natural deaths in detention
- establishing structured approaches for learning lessons from deaths in detention, and
- taking steps to increase transparency to ensure adequate scrutiny, including by monitoring the implementation of the duty of candour.

Recommendation 17: Healthcare for adults with mental health conditions in Wales

The EHRC recommends that the Welsh Government respond to the challenge identified in 'Is Wales Fairer?' to improve access to mental health services and support to people experiencing poor mental health, and to reduce the rate of suicide especially among men.

Recommendation 18: Healthcare for children with mental health problems in England – Article 12

In order to fulfil children's right to enjoy the highest attainable standard of mental health, as required by Article 12 ICESCR, the EHRC recommends that the UK Government:

- ensures that funding for Clinical Commissioning Groups to provide Child and Adolescent Mental Health Services meets rising demands
- considers how to implement the recommendations of the House of Commons Health Committee, including on the availability of data on children's mental health, the prioritisation of early intervention, and improving outpatient services, and
- amends the Mental Health Act 1983 so that it is no longer possible to detain children in police cells under Section 135 or Section 136 of that Act.

Recommendation 19: Violence against women and girls (VAWG) and the right to health in the UK – Article 12

As part of the UK Government's efforts to strengthen the protection of women's right to health as protected by Article 12 ICESCR, the EHRC considers that the UK Government should implement the recommendations of the Taskforce on the Health Aspects of Violence against Women and Children. In particular, NHS England should prioritise and provide greater investment in tackling VAWG.

Recommendation 20: Access to work in the UK – Articles 2 and 6

In order to ensure the right to work of young people, Muslims and disabled people under Article 6, taken in conjunction with the right to freedom from discrimination under Article 2(2) ICESCR, the UK Government should:

- continue to monitor access to work for groups with comparatively low employment rates and high unemployment rates such as young people, Muslims and disabled people, and conduct research into the causal factors for these differences in access to employment

- expand the employment reporting duty in Clause 1 of the Welfare Reform and Work Act 2016 to include a duty to measure and report on progress towards closing the gap in access to employment for disabled people
- monitor the impact of the cap in the Access to Work Programme on disabled people with higher support needs, such as those with hearing or visual disabilities and on employers' practices. If adverse impacts are identified, the UK Government should set out ways to mitigate these
- implement the House of Commons Work and Pensions Select Committee recommendations to:
 - retain a separate, specialist employment programme for people with substantial health and disability-related barriers to employment
 - at least double the number of places available on the new specialist programme, compared to the current Work Choice programme
 - ensure that the new Work Choice programme continues to be voluntary, that it is open to unemployed people, regardless of whether they are claiming an out-of-work benefit, and that it has clearer and less restrictive eligibility criteria, and
 - provide pre-employment support for up to at least 12 months.

The EHRC recommends that the Welsh Government responds to the challenge identified in 'Is Wales Fairer?' to encourage fair recruitment in employment by increasing the employment rates of young people, disabled people, ethnic minorities and Muslims.

Recommendation 21: Working conditions of migrant workers and overseas domestic workers in the UK – Article 7

In order to fulfil its duty to protect workers from third parties which may cause adverse impacts on their right to just and favourable conditions of work under Article 7 ICESCR, the EHRC recommends that the UK Government:

- raises awareness among workers regarding their rights in terms of pay, holiday leave and sick leave, and discrimination, abuse or harassment through developing a single, up-to-date source of information in the UK that covers broad employment rights issues, relevant to all sectors
- outlines the action it is taking, including through regulations, to address gaps in the Modern Slavery Act 2015, including:

- the absence of a formal appeals process for individuals, in line with the view of the Council of Europe Convention on Action against Trafficking in Human Beings (monitored by GRETA)
 - a lack of explicit requirements on tackling trafficking and slavery in the regulations of all relevant authorities that are likely to come into contact with potential victims. These include health authorities, schools, prisons, probation services and competent authorities, as well as voluntary organisations performing a public function, and
 - insufficient clarity in those regulations on whether only a credible suspicion is required to trigger this duty
- commits to considering in a timely way the recommendations of the independent review of the Overseas Domestic Worker visa.

Recommendation 22: Working conditions – low pay and agency workers in England and Wales – Article 7

To protect the rights of workers to just and favourable conditions under Article 7 ICESCR, the EHRC recommends that the UK Government:

- monitors the impact of the new National Living Wage on the proportion of women in low-paid work and the gender pay gap. Where adverse impacts are identified, develop actions to mitigate these
- considers extending the protection of the National Living Wage to those under 25 years old and outline steps which may be taken to protect workers against age discrimination that arises as the result of the different rules for under- and over-25 year olds
- considers increasing the level at which the National Living Wage is paid so that it constitutes a Living Wage adequate to meet costs of living across the UK, including in areas where these are comparatively high
- sets out the expectation that those cleaning firms that are capable seek accreditation with the Living Wage Foundation, and that clients who make use of the services of cleaning firms encourage them to pay Living Wage rates by ensuring the contract value covers the cost of this
- assesses whether to encourage the extension across the public sector of the good practice, established by some public bodies, of paying their directly

employed staff the Living Wage, in line with the recommendation of the Living Wage Commission

- ensures that when public bodies commission services such as care or cleaning they:
 - fulfil their statutory responsibility under the PSED to pay due regard to eliminating discrimination and advancing equality when procuring goods and services
 - pay rates that reflect the living wage, and
 - execute contracts for purchasing goods and services with respect for human rights, as per the commitment made by the UK Government in its national action plan on business and human rights
- consider how to implement the duty to protect individuals against acts of third parties which could have an adverse impact on the right to just and favourable working conditions by setting out a strategy for encouraging and monitoring private providers to ensure that workers receive the Living Wage
- provides clear guidance targeted at agency workers on the duties of their employers under the law, such as the Agency Workers Regulations 2010 and the EU Working Time Directive, and
- reviews the Agency Workers Regulations 2010 to evaluate their effectiveness in protecting agency workers.

Recommendation 23: Working conditions – Equal pay in the UK – Article 7

In order to guarantee access to just and favourable conditions of work on a non-discriminatory basis, as required by Article 7 ICESCR, and recommended by UN CESCR, the EHRC recommends that the UK Government takes steps to:

- tackle the persistent gender pay gap, including by:
 - facilitating access to all jobs on a more flexible basis to allow all parents to share childcare equitably without compromising their future careers
 - monitoring and enforcing the new regulation requiring businesses to publish information on their gender pay gap, and
 - addressing problems in terms of the availability and affordability of childcare, including by:

- collecting data (disaggregated by protected characteristic) about those children taking up free early education or childcare in England and feeding back on findings to schools
 - introducing a truly flexible parental leave scheme, and
 - ensuring more equal access to parental leave, as set out in the EHRC's submission to the CRC
- improve data collection to understand the prevalence and causes of pay gaps in relation to disability and race
 - review existing UK Government statistics with a view to producing regular estimates of the pay gaps for full-time and part-time work, for all the relevant protected characteristics in the Equality Act 2010, and
 - review the impact of the recent introduction of fees for employment tribunals in Great Britain and of the repeal of Section 138 of the Equality Act 2010, to ensure that these changes do not bring about adverse impacts or obstruct access to civil justice.

The EHRC recommends that the Welsh Government responds to the challenge identified in 'Is Wales Fairer?' to encourage fair development and reward in employment by closing pay gaps focusing on young people, ethnic minority people and women.

Recommendation 24: Working conditions – casualisation of employment in the UK – Article 7

In order to ensure the progressive realisation of the right of everyone to just and favourable conditions of work under Article 7 ICESCR, the UK Government should:

- conduct research to identify causal factors for increases in the numbers of people in part-time work who want to work full time, under-employment, temporary employment and steps that should be taken to address these increases
- work with employers to identify steps that should be taken to ensure that the use of zero-hours contracts does not erode the rights of workers to just and favourable conditions of work, and
- clarify the definition of self-employment and identify the impact of the increase in self-employment on the protection of employment rights, particularly among potentially vulnerable groups.

Recommendation 25: Working conditions – discrimination in employment in the UK – Article 7

In order to ensure the progressive realisation of the right of everyone to just and favourable conditions of work, the UK Government should encourage FTSE 350 companies to increase the number of women in executive board positions and improve access to boards of FTSE 100 companies for ethnic minorities and disabled people.

Recommendation 26: Working conditions – junior doctors' contracts in England – Article 7

In order to demonstrate that the new contracts of employment for junior doctors in England do not reduce the protection of just and favourable conditions of work to which they are entitled under Article 7 ICESCR, the EHRC recommends that the UK Government:

- as a matter of good practice, extends its impact assessment of the junior doctors contracts to include the impact on the implementation of Article 7 ICESCR, including the effects of changes to doctors who work part time, who have responsibilities as carers, and who take maternal, parental and other leave
- demonstrates that it has made every effort to use its maximum available resources in an effort to address and eliminate any disproportionate adverse impact on women, including by setting out its assessment of alternative and less discriminatory courses of action and the factors taken into account to balance the objectives of the contract against its differential impact on women, and
- ensures the new contract of employment for junior doctors does not unlawfully indirectly discriminate against some doctors, and that it properly considers and monitors the potential impacts of the contract on equality of opportunity.

Recommendation 27: Working conditions – pregnancy and maternity discrimination in the UK – Articles 3, 6 and 7

In order to strengthen the implementation of the right to work and the right to just and favourable working conditions of pregnant women and new mothers, in line with Articles 3, 6 and 7 ICESCR, the UK, Scottish and Welsh Governments should:

- work in partnership with the EHRC and businesses to identify effective interventions that enable employers to manage and make best use of the talent and experience of pregnant women and new mothers, and to ensure that employers are aware of and comply with their legal obligations.

In addition to this, the UK Government should:

- improve access to information, including by:
 - reviewing the availability of and women's ease of access to employment advice services and address any barriers identified
 - using existing information channels to deliver timely and relevant information on employment rights to pregnant women and employers
 - creating a single comprehensive online site so that employers and individuals can easily find out about their rights
- improve access to justice, including by making changes to the employment tribunal fee system to ensure that fees are not a barrier to accessing justice for women experiencing pregnancy and maternity discrimination.

Recommendation 28: Impact of the Trade Union Bill in the UK – Article 8

In order to demonstrate that the provisions of the Trade Union Bill comply with the UK's obligations under Article 8 ICESCR, the EHRC recommends that the UK Government provide a full justification for any measures which restrict the right of trade unions to function freely, subject only to limitations that are necessary in a democratic society, and the right to strike in conformity with national law. This justification should provide an explanation for:

- the thresholds set for ballot turnout and industrial action
- the status and responsibilities of picket supervisors and how these will address the aim of protecting non-strikers from intimidation, and

- how trade unions' rights to a fair hearing will be protected in the context of the additional powers given to the Certification Officer.

Recommendation 29: Right to education in England– Articles 13 and 14

In its submission to the UN CRC, the EHRC made a number of recommendations that are also relevant to CESCR's consideration of the UK's compliance with the right to education under Articles 13 and 14 ICESCR, including:

- improved collection of data on the take-up of initiatives to improve access to education and attainment
- collaboration between schools and local authorities in England to collect, analyse and act upon data on in-year admissions and placement delays, disaggregated by protected characteristic and by those on free school meals
- an evaluation and review of the Special Educational Needs and Disability Code of Practice, including its implementation in the youth justice system
- adoption of a national Roma integration strategy focused on access to education, employment, healthcare and housing
- the disciplinary measure of permanent or temporary exclusion should only be used as a means of 'last resort' and this should be made explicit in any guidance issued
- the right to be heard before exclusion and to appeal against both temporary and permanent exclusions for under-16 year olds
- schools in England should be required to collect data on identity-based bullying across all the protected characteristics, to monitor progress and report to the local authority, and
- Personal, Social and Health Education should be included as a statutory subject, part of the National Curriculum in England.

Recommendation 30: Access to further and higher education in England– Article 13

In order to ensure that higher education is equally accessible to all in line with its obligations under Article 13 ICESCR, and as part of its strategy to improve access, participation and success in higher education, the UK Government should:

- review its equality analysis of the impact of increases to tuition fees to fully consider the effect of further increases on particular groups of students, particularly mature and female students and those with dependent children. If adverse impacts are identified, the UK Government should set out ways to mitigate these
- monitor the impact of the changes to student financing on the participation and attainment of female, single parent, disabled and mature students and those from ethnic minorities. Where adverse impacts are identified, it should review its policies or identify concrete actions to mitigate these impacts
- take targeted steps to increase the participation in higher education of White school leavers, disabled people including those with learning difficulties, students who have been in care, mature students and young adult carers, and to address the inequality in terms of access to higher-ranked HEIs by students from ethnic minorities
- ensure that the new transparency duty on universities, which includes reporting on socio-economic background of students, complements existing PSED requirements to collect, use and publish equality information on the protected characteristics of their students, and
- monitor the impact of changes to the Disabled Students' Allowance on the access, participation and success of disabled students to higher education. If adverse impacts are identified, the UK Government should set out ways to mitigate them.

Recommendation 31: Access to justice in England and Wales – Article 2

In line with its obligation under Article 2(1) ICESCR to achieve ESCR progressively by all appropriate means, the UK Government should ensure that changes impacting

on access to civil justice, including to the legal aid system, do not undermine access to courts and effective redress for ESCR violations, including by:

- monitoring the impact of reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) (applicable to England and Wales) on access to justice for rights protected by ICESCR, including for private family law, housing, non-asylum immigration and social security cases
- reviewing the particular impact of reforms introduced by LASPO on access to justice of disabled people, women, ethnic minorities, non-British nationals and those seeking redress for breaches of Article 8 of the European Convention on Human Rights in relation to family, housing or immigration cases. Where indirectly discriminatory effects are identified, steps should be taken to mitigate these effects
- commissioning independent research to fill gaps in evidence identified by the EHRC's literature review on changes to civil legal aid, including on:
 - the use of the fee remission system for employment tribunal fees
 - the under-use of legal aid which remains available
 - the impact of legal aid reforms for judicial review cases
 - the impact of the increase in the small claims limit
 - the extent to which mediation is used as an alternative, in particular by women of different religions or beliefs, and
 - what has happened to people who can no longer access advice, representation or the courts
- assessing the impact of new court and tribunal fees in Great Britain and taking steps to address any indirectly discriminatory effects arising from these changes, including the disproportionate impact of employment tribunal fees on women and ethnic minorities
- delaying the implementation of enhanced court fees for divorce petitions until the results of the current evaluation of employment tribunal fees are known
- reviewing the operation of the mandatory telephone advice gateway for England and Wales to ensure its accessibility and effectiveness, particularly for people with disabilities, those with limited English language skills, and parents of children with special educational needs
- reviewing the operation of the exceptional cases funding scheme for civil legal aid in England and Wales to address its shortcomings, including those identified by the High Court
- withdrawing proposals for a residence test for civil legal aid in England and Wales

- monitoring the effect of changes to legal aid for judicial review in England and Wales to ensure that individuals are not being prevented from challenging unlawful administrative decisions relating to ESCR
- reviewing the impact of budget reductions, together with the recent legal aid reforms, on provision of legal advice by non-governmental organisations, including law centres and Citizens Advice Bureaux, and
- publishing options for ensuring that changes to evidential requirements for domestic violence cases in England and Wales do not obstruct access to justice for victims of domestic violence who have suffered financial abuse.

Recommendation 31: Violence against women and girls in the UK – Article 3

In order to guarantee the equal enjoyment of men and women to ESCR in line with Article 3 ICESCR, the EHRC recommends that the UK Government continues to work towards ratification and implementation of the Istanbul Convention, including by:

- ensuring that victims of VAWG have access to adequately funded support services and sufficient legal support
- implementing the recommendations of the Joint Committee on Human Rights inquiry into VAWG, including by:
 - establishing an adequately resourced full-time coordinating body with a UK-wide strategy, action plan and centralised budget to address VAWG, and
 - implementing a comprehensive, coordinated and properly funded female genital mutilation strategy, whereby relevant organisations are held to account.

There is also a need for the ongoing implementation of comprehensive and co-ordinated strategies by the UK Government and devolved administrations to prevent and combat VAWG, introducing robust monitoring and accountability mechanisms to monitor the impact of these strategies, and ensuring the provision of services for victims.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com.

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website www.equalityadvisoryservice.com

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)
10:00 to 14:00 (Saturday)

Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback.

Alternative formats

This publication is also available as a Microsoft Word file from www.equalityhumanrights.com. For information on accessing a Commission publication in an alternative format, please contact: correspondence@equalityhumanrights.com.

© 2016 Equality and Human Rights Commission

Published April 2016

You can download this publication from

www.equalityhumanrights.com

© 2016 Equality and Human Rights Commission

Published: April 2016