

Great Britain

Equality and Human Rights Commission

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The SCA reaccredited the NHRI with A status in November 2015. The SCA recommended amendments in the NHRI legislation to ensure an independent and objective dismissal process for Commissioners, as well as ensuring the NHRI receives sufficient funding and operates independently from the State. Finally, the SCA recommended the establishment of an explicit process providing for the circulation, discussion and consideration by the legislature of the NHRI's reports.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Reduction in budget

The Commission has been subject to cuts to its budget since 2010, although it has prioritised its resources to significantly increase its enforcement activity in recent years. The Commission continues to closely monitor and manage spend against its allocated budget to ensure that resources are fully optimised. In addition, the Commission is actively engaging with Government to build a strong evidence base for the forthcoming spending review, developing positions and gathering evidence on the need for a sufficient and sustainable budget so that we can fulfil our statutory mandate.

Timeliness of appointments

The Commission's Chair and Commissioners are public appointments made by the Minister for Women and Equalities. The term of office of the Wales Commissioner ended on 31 May 2019 and the position is currently vacant. The UK Government process to appoint a new Wales Commissioner is ongoing and the Commission is encouraging Government to conduct a timely recruitment process.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Brexit

The Commission continues to work with governments, parliamentarians and other stakeholders to ensure no loss of protection enshrined in anti-discrimination legislation after Brexit based on the principles of no regression of existing rights and protections.

Changes to equalities legislation

- Additional responsibilities – for example, from 2017 any organisation that has 250 or more employees has been required publish and report specific figures about their gender pay gap in accordance with the Gender Pay Gap Regulations. In 2018/19 our enforcement work secured a 100% compliance rate for businesses believed to be in scope.
- New duties – for example, in Scotland, a socio-economic duty was introduced in April 2017 requiring public bodies such as local authorities, the police and the National Health Service to 'when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.' Scotland is the only part of Great Britain where this clause is in force and we are the regulator for this duty.

Checks and balances

Challenges are identified and recommendations made by the Commission with regards to the right to participation in public life, including: prisoner voting, diversity of representation and intimidation of parliamentary candidates - see the Commission's shadow report to the UN Human Rights Committee (pages 72-76).

References

- Shadow Report submitted to the UN in March in relation to the UK's compliance with the International Covenant on Civil and Political Rights:
<https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>

Functioning of justice systems

Challenges are identified and recommendations made by the Commission with regards the right to effective remedy and fair trial, in particular: legal aid reforms; court reform and modernisation; fast-track rules in immigration detention; and procedures for identifying and determining statelessness - see the Commission's shadow report to the UN Human Rights Committee (pages 29-33).

References

- Shadow Report submitted to the UN in March in relation to the UK's compliance with the International Covenant on Civil and Political Rights:
<https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Coronavirus Act 2020 brings into force, among other things, the following:

- Social distancing restrictions and provisions to mitigate the spread of COVID-19. The Commission has emphasised the importance of considering carefully the specific implications the restrictions could have on groups who are already disadvantaged; and highlighted that human rights provide a clear and practical framework to help determine how to impose restrictions that are proportionate and effective. It has emphasised that Government should ensure that statutory reports to Parliament required by the Coronavirus Act 2020 address the impact of the legislation on equality and human rights and reflect the views and experiences of groups sharing protected characteristics. These reports should assess the use of emergency legislative powers and monitor the protected characteristics of those affected.
- Relaxation of crucial safeguards on detention set out in the Mental Health Act. This includes reducing the number of doctors needed to approve detention, extending or removing time limits and reducing oversight for forced treatment. These provisions could exacerbate existing problems in the use of the Mental Health Act (which the Government has previously recognised and committed to reform) and

lead to inappropriate and prolonged detentions of disabled people and could particularly affect Black men, who are already subject to higher rates of detention. Moreover, more people with learning disabilities and/or autism, especially children with special educational needs and disabilities, could be admitted to inpatient units and held in restrictive settings. Reduced independent monitoring and restrictions on family visits heighten these risks. The Commission has urged Government not to implement the emergency provisions relating to the Mental Health Act unless strictly necessary and only for as long as is essential. Use of these powers must be recorded and monitored to ensure they are proportionate, including the justification for use and data on protected characteristics.

Other concerns relating to rule of law include:

- Increased use of digital technology in the justice system is being adopted to minimise the spread of the coronavirus – court proceedings are increasingly taking place by video or phone. The Commission’s inquiry into the criminal justice system has shown that people who have a learning disability or are experiencing mental ill health can find it difficult to participate fully in proceedings using the courtroom video and audio links now being expanded. Moreover, the impact of remote hearings on justice outcomes has not been fully evaluated and their implications are not fully understood. There may be unintended equality implications associated with video hearings given the disproportionate representation of people sharing particular protected characteristics in the criminal justice system. The Commission has produced an interim report to emphasise that appropriate adjustments must be put in place to maintain the ability to access a fair trial. It will publish the full inquiry report in June 2020.
- Changes to mental health tribunals in response to the pandemic are in force in England and Wales, and could make it significantly harder for people to challenge their detention and treatment. Fewer tribunal panel members are needed to make a decision, pre-hearing assessments are waived, and decisions can sometimes be made without a hearing. The Commission has said Government should monitor the temporary changes to mental health tribunal rules, and ensure tribunals are recording the justification for use and data on location and protected characteristics.
- The pandemic, and responses to it, present particular challenges for equality and human rights at a time when many of the organisations which hold the Government to account, such as Parliament, civil society and the media, have reduced capacity. The Commission has welcomed the Government’s pledge to provide £750m to the

charity sector. However, with the National Council for Voluntary Organisations estimating charities stand to lose £4bn in twelve weeks, it is concerned that smaller charities providing vital services, including advice services, are ill-placed to weather the storm. The Commission has said that Government must monitor support for civil society organisations and ensure they have the resources necessary; including smaller organisations on the frontline; and that Government should take proactive steps to increase the involvement of civil society organisations representing protected characteristic groups in policy-making related to the pandemic.

The Commission has:

- Written to the UK Prime Minister (19.3.20) about the human rights and equality considerations in responding to the coronavirus pandemic.
- Briefed parliamentarians (23.3.20) in response to the UK Government's emergency legislation to address the coronavirus crisis in the UK (Coronavirus Bill 2019-21).
- Engaged with various parliamentary select committee inquiries into different aspects of the impact of the pandemic, including evidence to the Home Affairs Select Committee Inquiry (21.4.20) and written and oral evidence to the Women and Equalities Select Committee Inquiry (written evidence published 19.4.20, oral evidence 20.4.20)
- Written a briefing (31.3.20) for the Scottish Parliament in advance of its plans to devise COVID-19 emergency legislation.
- Suspended enforcement action under the Gender Pay Gap reporting regulations for employers who fail to report their gender pay gap for 2019/20. This is in recognition that they will be dealing with the impact of COVID-19.
- Suspended enforcement activities in relation to the Public Sector Equality Duties in England, Scotland and Wales during 2020.
- Engaged with the British Retail Consortium (21.4.20) to highlight concerns that disabled and clinically vulnerable people must still be able to access and buy food and essential items in shops as part of any special measures introduced by retailers during the coronavirus crisis.
- Written to the British Medical Association (23.4.20) to highlight our concerns around its ethical guidance during the coronavirus outbreak (specifically in relation to older and disabled people) to remind them that the protected characteristics of patients should not influence medical decisions by doctors and health professionals about who should/should not receive treatment for coronavirus.

- Written to the Prime Minister concerning the importance of providing British Sign Language interpretation for the Government's daily briefings on the pandemic.
 - Published guidance clarifying reasonable adjustments related to working from home, and on pregnancy/maternity equalities issues arising from redundancy, furlough, and working from home.
- Published our interim report on the UK's criminal justice system – which highlights the negative impact of the use of digital technology in the justice system on certain disabled people.

Most important challenges due to COVID-19 for the NHRI's functioning

The Commission has taken measures to continue the fulfilment of its mandate in the COVID-19 context. It has made the following assumptions which may need to be revised as more information becomes available:

- Coronavirus will have an impact on staff, through ill health, isolation and caring responsibilities
- The Commission expects staff activity to reduce by around 25% during the first half of the financial year.
- The impact on stakeholders, government, international partners will be similar (e.g. courts shutting, Departments refocusing their work)

The Commission has reviewed the work plans for each of its aims to prioritise key activities which it will continue to deliver such as work on the Human Rights Tracker, and to pause a significant number of activities in order for it to develop a new programme of responsive work to tackle the COVID-19 crisis.

In deciding what to prioritise it considered whether the work: has key deadlines; is critical to the Commission's reputation as an NHRI and NEB; will have a significant impact (in terms of reach, scale etc); or whether delaying the activity would be the 'right thing to do' in order to allow others to prioritise the national response to the virus outbreak in Great Britain.

The following is a short summary of the work which the Commission is planning in response to COVID-19, although this will be flexible to emerging priorities.

- Core: The Commission is responding to Inquiries being held by the Women and Equalities Select Committee and the Joint Committee on Human Rights into the UK Government responses to coronavirus, and will actively influence the review points of the emergency legislation, and are similarly influencing the Scottish and Welsh

Governments. It is initiating a joint research project with Government Equality Office to ensure the impact of the Government's response to coronavirus on those with protected characteristics is properly understood. It is actively engaged with the Public Health England Inquiry into the disproportionate impact of coronavirus on black, Asian and ethnic minority people.

- **Work:** The Commission has engaged key partners such as the Advisory Conciliation and Arbitration Service (ACAS), the Chartered Institute of Personnel and Development (CIPD) and the Trade Union Congress (TUC) on ensuring that employees have appropriate protections during the pandemic. It is engaged with business umbrella groups to drive compliance with its recently published guidance clarifying reasonable adjustments related to working from home, and on pregnancy/maternity equalities issues arising from redundancy, furlough, and working from home. It will respond to the Business, Energy, Innovation and Skills parliamentary Select Committee inquiry, and work on the Employment Bill.
- **Access to Justice:** The Commission's criminal justice inquiry shows that people who have a learning disability or are experiencing mental ill health can find it difficult to participate fully in courtroom proceedings using the video and audio links now being expanded. It released an interim report to ensure the government considers reasonable adjustments in this area.
- **Education:** It will respond to the Select Committee coronavirus inquiry, and advise the Children's Commissioner on ensuring children's rights are safeguarded. It has engaged Ofqual on equality considerations in moving to predicted grades, and is engaged with the Department for Education to ensure that children with special educational needs receive sufficient support during school closure.
- **Institutions:** The Commission will work with stakeholders to influence the UK Government's agenda for example the relaxation of Mental Health Act detention safeguards, and where necessary take legal action. It is considering the impact on prisons and immigration detention (including through the Immigration Bill) through active legal cases relating to at-risk prisoners.
- **Transport:** The Commission is working with the Department for Transport and other stakeholders to ensure that disabled people continue to enjoy the right to assistance and accessible transport during this crisis.

References

- All published material relating to our response to the coronavirus pandemic is available on our website at: <https://www.equalityhumanrights.com/en/our-work/our-response-coronavirus-COVID-19-pandemic>

