

## **Joint Committee on Human Rights - The Government's response to COVID-19: human rights implications**

The Human Rights Consortium Scotland is a civil society network to protect and promote human rights in Scotland. Organisations who have specifically contributed to this submission are:

- Equality Network
- Alcohol Focus Scotland
- Howard League Scotland
- Fife Centre for Equalities
- Close the Gap
- Article 12 in Scotland
- Jimmy Reid Foundation
- Advocard
- Making Rights Real
- Health and Social Care Alliance Scotland (the ALLIANCE)
- Central Scotland Regional Equality Council
- Women for Independence - Independence for Women
- Deaf Scotland
- JustRight Scotland
- Engender
- Amnesty International

### **1. What steps need to be taken to ensure that measures taken by the Government to address COVID-19 pandemic are human rights compliant?**

#### **Human Rights Impact Assessments**

In order for the UK Government and public bodies to respect, protect and fulfil its human rights obligations, it is necessary to carry out Human Rights Impact Assessments of new policy, law and resource decisions. However, it is unclear whether and to what extent this has been done in COVID-19 decision-making. For example:

- Vital services, such as alcohol and addictions services, which were already stretched even before the pandemic, are being reprioritised without any evident human rights impact analysis.
- Replacement support for free school meals shows little evidence of human rights analysis in some Scottish local authorities where they have opted for vouchers or food packages, rather than dignity-respecting cash payments.

- Extending the existing timescales for compulsory measures such as detention or treatment orders may be incompatible with Article 14 right to liberty and security.

It is vital therefore, that during COVID-19 recovery, **the UK Government, the Scottish Government, and other public bodies undertake and publish Equality and Human Rights Impact Assessments of all COVID-19-related policy, resource decisions and law.**

These assessments need to be based on robust data to provide a competent and accurate understanding of the current crisis and the impacts on different groups, including gender analysis<sup>1</sup> e.g. who is being tested, who is furloughed, who is newly unemployed? Furthermore, EQHRIAs should include participation of those with lived experience.

### **Fully reinstate local authority duties**

The Coronavirus Act 2020 allowed for regulations that reduced local authority duties, such as the duty to carry out an assessment of social care needs or involve service users in decision making.<sup>2</sup>

Reductions in these duties often means, in practice, a reduction in people having a say over their own lives, a reduction in government being held accountable, and reductions in crucial services that people rely upon in order to have dignity, to participate and to live. Article 11 of the UNCRPD specifically highlights the need for greater protection of disabled people in times of national emergency, not less.

There is no comprehensive data in Scotland on local authority use of the reduced Coronavirus Act duties and the reasoning for their use<sup>3</sup>, and anecdotal evidence suggests that many disabled adults and families with disabled children have been very negatively impacted by reduction in vital services. Scottish civil society has indicated its concerns and called for greater clarity and public information about:

- The specific criteria that individual local authorities/Health and Social Care Partnerships have in place to make decisions on whether to use or not use the emergency powers.
- Who is involved in and consulted about decision making.
- The monitoring and oversight in place to help authorities assess whether using the powers has resulted in intended outcomes, or in other (potentially unintended) outcomes.

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<sup>1</sup> Engender, Gathering and using data: <https://www.engender.org.uk/content/publications/Covid-19-Gathering-and-using-data-to-ensure-that-the-response-integrates-womens-equality-and-rights.pdf> , April 2020

<sup>2</sup> <https://www.alliance-scotland.org.uk/blog/news/social-care-and-covid-19-emergency-powers/>

<sup>3</sup> Scottish Government, Coronavirus Acts: first report to Scottish Parliament, June 2020

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- The ways in which individual authorities are using emergency powers.<sup>4</sup>

Furthermore we are concerned that the prerequisite for use of this new weakened provision is set far too low, stating that needs assessments do not need to be carried out if 'it is not practical to do so'. This fails to recognise the huge importance of local authority care assessment and provision to people's lives and dignity, or the impact for further delays to assessments on people's lives – many of whom may have been waiting for months or over a year. **Therefore, particularly as we move out of lockdown, these regulations should be suspended immediately.**

In addition, **Schedule 9 which allows for regulations to amend duties around mental health care and treatment should be rescinded immediately.** These have not been 'switched on' and nor should they be, given that they would constitute a huge expansion of the state's control over people's lives with them having little, if any, say or protection.

### **Make sure COVID-19 communication is accessible to all**

Article 21 of the UNCRPD states that information must be provided to disabled people in the format they need on an equal basis to others. The Government must do more to ensure that communications about COVID-19 are accessible to all, enabling full participation, including to the approximate 1 million people in Scotland with particular communication needs<sup>5</sup> and those whose first language is not English.

### **3. Which groups will be disproportionately affected by measures taken by the Government to address COVID-19 pandemic?**

Those who already experience significant inequality and discrimination have been impacted the most by COVID-19, including women, children and young people, disabled people and older people, and this is compounded where they face multiple disadvantages. We further highlight the impact on:

- **Those in the immigration system**

The UK Government's steps to 'strengthen the safety net' for those in receipt of Universal Credit and Working Tax Credit by approximately £20 per week is very welcome. However, asylum support rates are barely 40% of the allowance people over 25 receive on Universal Credit. Far too many people on asylum support struggle to feed their families and have to make terrible choices between heating, medicines, access to IT for their children's learning, and clothes. In a country that respects human rights, this simply should not be the case. Asylum support rates should immediately receive the same £20 COVID-related uplift as Universal Credit.

In addition, people with No Recourse to Public Funds (NRPF) are often homeless, and so are particularly at risk of COVID-19, as well as more likely to be from BAME

<sup>4</sup> <https://www.alliance-scotland.org.uk/blog/news/social-care-and-covid-19-emergency-powers/>

<sup>5</sup> Scottish Government letter to Scottish Parliament Equalities and Human Rights Committee, accessed 29/6/20: [https://www.parliament.scot/S5\\_Equal\\_Opps/Correspondence\\_from\\_Minister\\_2406.pdf](https://www.parliament.scot/S5_Equal_Opps/Correspondence_from_Minister_2406.pdf)  
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communities who are disproportionately impacted. The NRPF system should be suspended, and people instead given full access to health, accommodation and other support.

- **Black and Minority Ethnic communities**

We know that BAME communities have been disproportionately impacted by COVID-19. The Scottish Government has established an Expert Group on COVID-19 and BAME. However, we remain concerned that the necessary data around BAME communities in Scotland is sorely lacking and needs to be urgently addressed in order to effectively bring about change.

- **LGBTI people**

There are higher rates of anxiety, depression, substance use, eating disorders, self-harm and suicide amongst the LGBTI population. Social isolation, crisis and trauma, and lack of access to ongoing support as a result of COVID-19 is likely to exacerbate and entrench these mental health inequalities.

Research shows that LGBTI people of all genders can have an increased risk of facing domestic abuse, including LGBTI young people (1 in 4). There is an increased risk, and likelihood of increased severity, of domestic abuse and gender-based violence when there is a requirement to stay home, including for LGBT people.

There is an increased risk of homelessness amongst LGBTI youth, particularly due to family rejection after coming out about their sexual orientation or gender identity. LGBT young people may be at particular risk of experiencing homelessness during the current crisis, due to having to spend greater periods of time with unsupportive family members due to 'lockdown' measures.

- **Those living in poverty**

Too many people were living in poverty before COVID-19 and this has only increased since COVID-19. We highlight that experience of poverty is gendered, with women are more likely to be in poverty, more likely to experience in-work poverty, and more likely to experience persistent poverty than men.

Article 9 of ICESCR gives a right to social security and Article 11 to an adequate standard of living. As more people will have to rely on social security, the Government should consider again whether it gives everyone an adequate standard of living. In particular, larger families could not possibly have foreseen the pandemic when making decisions about family life. Noting that Article 26 of the UNCRC states that every child should benefit from social security and the two child limit should be scrapped.

- **EU citizens**

Many EU citizens and their families are being denied access to crucial benefits or having their benefits suspended because they have not lived in the UK for more than five years, and cannot, during the pandemic, show their right to reside through employment. As of April 2020, 1.3 million EU citizens and family members had been granted pre-settled status. Many of them are being forced to choose between following Government guidance to stay at home and falling into destitution, or returning to work and risking their own and public health. It is vital that pre-settled status is made an automatic 'right to reside' to protect EU citizens from COVID-19, destitution and control the spread of the virus.

- **Those in prison and their families**

In an effort to prevent the spread of COVID-19, family visits were suspended, accompanied by the introduction of severely restricted regimes. Short scrutiny visits by HMIPS and HMI Prisons found that many prisoners were locked in their cells for more than 22 hours per day, with some only allowed out for 20 minutes per day. This meets the internationally accepted definition of solitary confinement, thus contravening the Mandela Rules and amounting to inhuman and degrading treatment in breach of Article 3 of the European Convention on Human Rights.

The early release programme in Scotland only included those in the last three months of a sentence of 18 months or less, with exemptions for particular crimes. 348 prisoners were released early under this legislation. However, none were released on the basis of their, or a dependent child's, vulnerability e.g. a child; a pregnant woman; a woman with sole parental responsibility; or an elderly person with a serious physical or mental incapacity, who would suffer disproportionately from the isolating and restrictive prevention measures.

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