



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Response to Joint Committee on Human  
Rights Inquiry into the Government's  
Response to COVID-19: Human Rights  
Implications**

**April 2020**

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## 1.0 Introduction

- 1.1 This submission from the NI Human Rights Commission (NIHRC) follows the Joint Committee's format, dealing with each posed question in turn.

## 2.0 Human Rights Compliance

- 2.1 Human rights have flexibility built-in to enable governments to exercise discretion. This can be discretion to enhance or, to limit protections, except in cases of absolute rights.<sup>1</sup> The Siracusa Principles clarify that any limitations on individuals' rights must respond to a pressing public or social need and be proportionate in pursuing that legitimate aim.<sup>2</sup> Prevention of the spread of COVID-19 and to preserve the life and health of those affected or under threat of infection is a legitimate aim, as confirmed by the World Health Organisation. The Siracusa Principles outline that due regard shall be had to the international regulations of the World Health Organisation.<sup>3</sup>
- 2.2 The NIHRC welcomes the introduction of a six-month Parliamentary review<sup>4</sup> and the requirement on the Secretary of State to report every two months.<sup>5</sup> The restrictions should last no longer than is absolutely necessary. However, the NIHRC is concerned that the emergency legislation applies for two years,<sup>6</sup> with the ability to extend or to suspend/revive the powers resting with Ministers/devolved Departments.<sup>7</sup> The NIHRC is also concerned should any of the limitation of rights set out in the measures could become the new normal.

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<sup>1</sup> Absolute rights include Articles 3 (prohibition of torture), 4(1) (prohibition of slavery), 7 (no punishment without law) of the European Convention on Human Rights. These rights should not be limited or interfered with under any circumstances.

<sup>2</sup> Principle 10(a), Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights 1985.

<sup>3</sup> Principle 26, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights 1985; Sarah Boseley, 'WHO declares coronavirus pandemic', *The Guardian*, 11 March 2020.

<sup>4</sup> Section 98, Coronavirus Act 2020.

<sup>5</sup> Section 97, Coronavirus Act 2020.

<sup>6</sup> Section 89, Coronavirus Act 2020.

<sup>7</sup> Section 88, Coronavirus Act 2020.

**2.3 The NIHRC recommends that the emergency legislation is only in place for no longer than absolutely necessary to address the COVID-19 pandemic and the contained powers are only utilised when it is necessary and proportionate to do so.**

## **3.0 Human Rights Impact of Specific Measures**

### **Healthcare**

- 3.1 The emergency powers to expand the healthcare workforce<sup>8</sup> may reduce scrutiny of whether trainee and reinstated healthcare professionals are qualified to join the workforce and have sufficient protections.
- 3.2 Reassignment of healthcare staff may negatively affect others' health and social care, particularly disabled people. Removal of important safeguards for mental health care needs is also concerning.
- 3.3 Special measures to address the health and social care needs outside of this crisis are lacking, particularly for those with complex needs or those that require travel to other jurisdictions. This impacts disabled person's capacity to live independently and there is no provision to review changes to care.
- 3.4 Delays in the implementation of the Abortion (NI) Regulations 2020 mean that women and girls are unable to access terminations in Northern Ireland on the same terms as the rest of the UK. Temporary plans within health and social care trusts to provide an interim service until full services were in place were put on hold following an intervention from the Department of Health suggesting that delivery of the services was a matter that needed to be referred to the NI Executive.<sup>9</sup> The Department has since written to the Royal College of Gynaecologists and Obstetricians advising that it has received legal advice to allow for the introduction of planned services by some health and social care trusts in Northern Ireland

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<sup>8</sup> Sections 2, 5, 8, 9 and 13 and Schedules 1, 4, 7 Parts 1, 2, 4 and 5, 10, Coronavirus Act 2020.

<sup>9</sup> Jayne McCormack, NI health trusts 'stopped from carrying out early abortions', *BBC News*, 9 April 2020.

without requiring approval from the NI Executive.<sup>10</sup> To date, neither interim nor final guidance has been issued by the Department of Health around the provision of services during the crisis.

- 3.5 The NIHRC welcomes reports that following interventions by the Commission and others with the Department of Health and with NI Assembly Committee for Health, it appears termination services up to ten weeks are now available in some health trusts in Northern Ireland.<sup>11</sup> This process is being facilitated by Informing Choices NI, who are acting as a central access point.<sup>12</sup> In person consultation with a doctor is required and the first pill must be taken at the clinic, with the second pills taken at home. Following guidance from the Department of Health in England, and the Welsh Government and the Chief Medical Officer in Scotland, a 'telemedicine' option is now available for women and girls seeking a termination up to ten weeks in other parts of the UK.<sup>13</sup> This allows for an initial consultation with a doctor to happen by telephone and for early medical abortion pills to be sent by post. An equivalent service is not available from the NHS in Northern Ireland. In response to the initial withdrawal of services, the independent charity British Pregnancy Advisory Service extended its 'telemedicine option' to Northern Ireland.<sup>14</sup> It is too early to tell whether the services are effectively and comprehensively meeting the needs of women and girls across Northern Ireland.
- 3.6 Lack of provision to tackle opportunistic inflation of medical costs.
- 3.7 NICE guidelines indicate that difficult decisions will be made around access to medical care in a resource limited environment.<sup>15</sup> Yet, the UN Special Rapporteur on Older Persons warns "triage protocols must be developed and followed to ensure such decisions are made

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<sup>10</sup> Ibid.

<sup>11</sup> Brendan Hughes, 'Central access point' launched for abortion services in Northern Ireland, *Irish News*, 16 April 2020.

<sup>12</sup> Informing Choices NI, 'Central Access Point'. Available at: <https://informingchoicesni.org/central-access-point>

<sup>13</sup> Department of Health and Social Care, 'The Abortion Act 1967 – Approval of a Class of Places' 30 March 2020; Welsh Government, 'The Abortion Act 1967 – Approval of a Class of Place for Treatment for the Termination of Pregnancy (Wales) 2020', 31 March 2020; Chief Medical Officer Directorate, 'Abortion – COVID-19 – Approval for Mifepristone to be Taken at Home and Other Contingency Measures', 31 March 2020.

<sup>14</sup> British Pregnancy Advisory Service, 'Pills by Post - Remote Abortion Pill Treatment'. Available at <https://www.bpas.org/abortion-care/abortion-treatments/the-abortion-pill/remote-treatment/>

<sup>15</sup> National Institute for Health and Care Excellence, 'COVID-19 Rapid Guideline NG159: Critical Care in Adults' (NICE, 2020).

on the basis of medical needs, the best scientific evidence available, individual circumstances and not on generic non-medical criteria such as age or disability”.<sup>16</sup>

3.8 Migrants fear seeking medical treatment because of data sharing between the Department of Health and Home Office.

**3.9 The NIHRC recommends that when reconfiguring services and redirecting resources full account is taken of the impact on other vulnerable patients and groups and that full cognisance is taken of the need to ensure the highest attainable standard of health for all is pursued. This includes ensuring care arrangements are subject to constant review and triage protocols are developed and implemented based on medical needs and the best scientific evidence available.**

**3.10 The NIHRC recommends that provision for visitors in exceptional circumstances is extended to relatives of patients receiving palliative care in all settings.**

**3.11 The NIHRC recommends that medicine prices are capped or subsidised to ensure accessibility to all.**

**3.12 The NIHRC recommends that comprehensive guidance is immediately provided to clinicians on terminations in NI, in light of the Abortion (NI) Regulations 2020, and State-sponsored provision is made immediately available for telemedicine terminations up to 10 weeks in Northern Ireland on the same terms as England, Scotland and Wales.**

### **Deprivation of liberty**

3.13 Detention of persons for the prevention of the spreading COVID-19<sup>17</sup> should not be arbitrary.<sup>18</sup>

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<sup>16</sup> UN Special Rapporteur on Older Persons, 'Press Release: "Unacceptable" – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic', 27 March 2020.

<sup>17</sup> Sections 10(3), 10(4) and 51 and Schedules 10, 11 and 21, Coronavirus Act 2020.

<sup>18</sup> *Enhorn v Sweden* (2005) ECHR 34, at para 44.

**3.14 The NIHRC recommends detention powers are only used as a last resort and for no longer than is necessary on a case-by-case basis. The use of these powers should also be effectively monitored and any concerns with their use promptly addressed.**

### **School closures**

3.15 Home schooling<sup>19</sup> for any period may negatively impact children from households with low levels of income, in rural areas with poor internet connection or with special educational needs.

3.16 UNICEF has expressed concerns that “children are at a heightened risk of abuse, neglect, exploitation and violence amidst intensifying containment measures”.<sup>20</sup>

**3.17 The NIHRC recommends additional educational and health and social care support during and after the crisis is available for children particularly affected by school closures, including making broadband and computer arrangements to ensure all children have access to the internet.**

3.18 Closure of schools is impacting parents/guardians’ ability to work. The potential loss of wages and limited paid parental leave available risk increasing household poverty.

**3.19 The NIHRC recommends, where required, additional financial support is available to ensure childcare challenges presented by school closures do not increase household poverty due to loss of earnings.**

### **Social security and protection**

3.20 Amendments to national insurance, Universal Credit and statutory sick pay are welcomed.<sup>21</sup> However, increased Universal Credit

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<sup>19</sup> Sections 37(3) and 38(3) and Schedules 16 Part 3 and 17 Part 3, Coronavirus Act 2020.

<sup>20</sup> UNICEF, ‘Press Release: Children at heightened risk of abuse, neglect, exploitation and violence amidst intensifying containment measures’, 20 March 2020.

<sup>21</sup> Sections 72-76, 77(1) and 77(2), Coronavirus Act 2020.

claims will cause delays and increased poverty.<sup>22</sup> Statutory sick pay is limited in terms of amount and who it applies to. The additional Discretionary Support payments in NI is welcome.<sup>23</sup> The additional support provided to those reliant on social security must be placed in the context of the freezing of key means-tested benefits for another four years and other restrictions on social security entitlements including the two child policy and benefit cap. The easing of local housing allowance rules within housing benefit simply restored claimants to a position that applied after the initial cut to the provisions when first introduced. Consideration should be given to maintaining additional support once the COVID-19 crisis has ended.

3.21 People in low income households have limited financial resilience, such as savings, to weather the current crisis and are unable to make decisions to reduce costs in the way higher income households can.<sup>24</sup> As the NIHRC's recently published cumulative impact assessment of tax and social security changes demonstrates, low income households, lone parents and households with an adult or a child with a disability are particularly adversely impacted by policies introduced over the past decade. For example, the economic provisions offered are not sufficient to cover sudden loss of regular income,<sup>25</sup> which limits ability to pay for bulk food items or home deliveries.

3.22 Those whose immigration status is based on having 'no recourse to public funds' have also not been effectively provided for. The reliance on local authority provision is a problem in Northern Ireland where local councils do not have responsibility for housing, social services or education.

### **3.23 The NIHRC recommends that the two-child limit and the benefit cap are removed.**

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<sup>22</sup> Jayne McCormack, 'Coronavirus: Almost 20,000 new NI claims for universal credit', *BBC News*, 26 March 2020.

<sup>23</sup> Department for Communities, 'Press Release: Minister announces further support for those affected by COVID-19', 24 March 2020.

<sup>24</sup> StepChange, 'Rescue package needed to help household finances cope with COVID-19'. Available at: <https://www.stepchange.org/media-centre/press-releases/coronavirus-households-need-help.aspx>; Clare McNeil et al, 'Children of the Pandemic: Policies Needed to Support Children During the COVID-19 Crisis' (IPPR, 2020); Suzanne Fitzpatrick et al, 'Destitution in the UK' (JRF, 2016).

<sup>25</sup> Sections 42-44, 47, 72-76, 77(1) and 77(2), Coronavirus Act 2020.

**3.24 The public funds test should be suspended during the pandemic.**

## **Housing**

3.25 Provision to prevent evictions in the private sector within the Act does not yet extend to NI.<sup>26</sup> The Department for Communities has an agreement with housing providers that any social housing tenant struggling to pay rent during COVID-19 will not be evicted.<sup>27</sup> The Private Tenancies (Emergency Modifications) Bill extends the notice to quit period for private tenants from four to 12 weeks.

3.26 Particular consideration should be given to those who are homeless and with no recourse to public funds.

**3.27 The NIHRC recommends all evictions are prohibited during the COVID-19 crisis and those that the homeless are provided with adequate, accommodation which meets their needs.**

## **Data retention**

3.28 Extending the timeframe for retaining an individual's biometric data<sup>28</sup> must be lawful and necessary.<sup>29</sup>

**3.29 The NIHRC recommends utilising the extension of data retention is effectively monitored to ensure it is not disproportionately relied on to enhance government surveillance. Any provision should apply for no longer than necessary and be open and transparent in its implementation.**

## **Movement restrictions**

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<sup>26</sup> Section 81 and Schedule 29, Coronavirus Act 2020.

<sup>27</sup> Department for Communities, 'Press Release: Housing support crucial in this crisis – Hargey', 27 March 2020.

<sup>28</sup> Section 24, Coronavirus Act 2020.

<sup>29</sup> *S and Marper v UK* (2008) ECHR 1581, at paras 100 and 101.

3.30 Restricting movement necessarily affects access to carers, impacts mental health and increases risk of domestic and care home abuse.<sup>30</sup>

**3.31 The NIHRC recommends exceptions are permitted and additional specialised support is available to ensure the most vulnerable are not in harm's way, particularly those relying on carers, experiencing mental ill-health, or subject to domestic or residential abuse.**

## 4.0 Disproportionately Affected

4.1 Many people already disadvantaged are particularly impacted by the COVID-19 measures including those experiencing poverty, domestic violence, migrants, children, carers and those living in remote rural areas. While there will be a need to restore the economy and raise revenue, given the increase in public expenditure, this should be done in a way that does not penalise the already disadvantaged. Any policies to recover the substantial unplanned expenditure should ensure the best able to pay bear the greatest burden. As Philip Alston states "the regressive or progressive nature of a State's tax structure shapes the allocation of income and assets across the population, and thereby affects various types of inequality".<sup>31</sup>

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<sup>30</sup> Sections 48, 50, 41 and 52 and Schedules 20, 21 and 22, Coronavirus Act 2020.

<sup>31</sup> Philip Alston, 'Tax Policy is Human Rights Policy: The Irish Debate', Keynote Address at Christian Aid Conference on The Human Rights Impact of Tax and Fiscal Policy in Dublin, 12 February 2015.

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