



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Your Human Rights during the Covid-19 Pandemic

Are my human rights protected during the Covid-19 Pandemic?

Yes, the Human Rights Act 1998 continues to apply during the Covid-19 Pandemic. However, the UK and Northern Ireland Governments have used emergency powers, which restrict the freedoms we normally take for granted. That does not mean human rights automatically take a back seat. Human rights law and standards recognise that public health and other emergencies can arise and contain principles and legal mechanisms for responding to these.

How are my human rights protected?

The Human Rights Act 1998 protects the rights of persons in Northern Ireland. The Human Rights Act 1998 has brought the rights under the European Convention on Human Rights (ECHR) into our local law. Public authorities are under a duty to act in compliance with these rights. If you believe your human rights have been breached by the government or a public authority you can challenge this in Court.

Can the government restrict human rights?

Yes, under human rights law, the government is allowed to restrict human rights for the purposes of public safety and the protection of health, including the right to life. Decisions about the imposition or lifting of restrictions is a matter for the Government. This careful balancing exercise between public safety and the rights of individuals requires regular review to ensure that any restrictions are set out in law, allow for legal challenge and continue to be necessary and proportionate. Furthermore, that they only apply for as long as is necessary to deal with the emergency.

If human rights are restricted unlawfully or disproportionately, this may lead to the Courts deciding that there has been a violation of human rights.

What human rights can be restricted?

Certain human rights cannot be restricted, such as the right to life (Article 2 ECHR), the right not to be tortured or treated in an inhuman or degrading way (Article 3 ECHR) and the right not to be forced to work, or to be trafficked (Article 4 ECHR).

Other human rights can be restricted in some circumstances. For example, the right to liberty (Article 5), right to respect for private and family life (Article 8 ECHR), right to peaceful assembly (Article 11 ECHR) and right to education (Protocol No 1, Article 2 ECHR).

Any restriction on these human rights must be:

- (1) in accordance with the law;
- (2) in pursuit of a legitimate aim;
- (3) proportionate in achieving that aim.

What does human rights law say on vaccinations?

Any medical procedure in Northern Ireland requires informed consent. This is in line with the right to respect for private and family life protected under Article 8 ECHR.

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The European Court of Human Rights has recognised that Article 8 could be restricted by public health considerations and the necessity to curb the spread of infectious disease (see [Solomakhin v. Ukraine](#)).

Would mandatory Covid-19 vaccinations be human rights compliant?

Presently, Covid-19 vaccinations are not mandatory for individuals in Northern Ireland. The human rights compliance of a potential mandatory vaccination would depend on the balance between the rights of an

individual's personal integrity and the public interest of the population. It would be for a Court to determine whether this balance had been met.

The issue of compulsory vaccination was recently considered by the European Court of Human Rights in the case of [*Vavricka and Others v Czech Republic*](#). Here, the applicants complained about the consequences of not complying with the programme of childhood vaccinations required in the Czech Republic. The European Court of Human Rights considers that any form of compulsory vaccination is an interference with the right to respect for private life as it represents an involuntary medical intervention. However, in this case, the Court decided that the Government in the Czech Republic had a legitimate aim of protecting the public against diseases which pose a serious risk to health and considering the wide margin of appreciation that individual States have in this area, the measures were proportionate to achieving this legitimate aim. Here, the Court outlined that Czech government policy was said to be in line with the best interests of children as it sought to protect children against serious disease. The legislation was strongly supported by medical authorities and designed to protect public health and also ensure a high take up rate of vaccinations.

Although this case provides guidance as to how the issue of compulsory childhood vaccination is to be interpreted under human rights law, the particular context of the Covid-19 pandemic has not yet been considered by the Court. However, in September 2021, an application was made to the European Court by a French firefighter, challenging a law which mandates vaccination for certain workers, (except where there is a recognised medical impediment).¹ The applicant is relying on, amongst other rights, Article 8 ECHR (right to respect for private and family life). This case is likely to take some time to progress, but will provide further guidance as to mandatory vaccinations in the workplace.

Other situations where a vaccination may be required, for example, by an employer as a condition of returning to the workplace may give rise to legal issues depending on the particular circumstances.

The Department of Health intends to consult on whether Covid-19 vaccinations should be made mandatory for new recruits to the health and social care system. The Commission will keep this under review.

¹ Application no. 46061/21.

Is the Covid certification scheme a breach of my rights?

New regulations came into effect on 29 November 2021 which require Covid-19 certification for adults to enter certain indoor hospitality premises and events.² This means that these venues such as nightclubs, restaurants, cinemas and theatres as well as other indoor and outdoor events, must ask for evidence of your status before allowing you to enter. Certain events are exempt such as a funeral, marriage ceremony, civil partnership registration and gatherings for these events as long as alcohol is not consumed on the premises. Places of communal worship are also exempt.

Along with children under 18 years old, certain adults will also be exempt from having to show their Covid certification, such as those who are medically exempt from vaccination.

You can show your status where required for entry through:

- the domestic certificate obtained through the COVIDCert NI App³ or by way of a paper certificate;
- a negative Lateral Flow test result in the previous 48 hours;
- proof of recovery from a positive PCR test in the previous 30-180 days;
- confirmation in writing of their participation (current or past) in a clinical trial for vaccination against coronavirus from the organiser of that trial;
- evidence provided through the NI Covid Certification process for medical exemption from vaccination.⁴

The Commission recognises that the scheme engages Article 8 (right to private and family life); Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination). The Department is entitled to take measures to protect public health, even where these may introduce limitations on rights. It is for the Department to demonstrate these measures are both necessary and proportionate. It would be for the Court to determine if a breach of the ECHR has occurred.

² [The Health Protection \(Coronavirus, Restrictions\) Regulations Northern Ireland 2021 \(Amendment No.19\)](#)

³ <https://www.nidirect.gov.uk/services/apply-domestic-covid-vaccination-certificate>

⁴ <http://www.health-ni.gov.uk/news/update-covid-certification-scheme>

The Commission continues to review whether the restrictions and requirements imposed by these Regulations are proportionate in responding to a threat to public health.

The Northern Ireland Human Rights Commission's role during the Covid 19-Pandemic

What is the Northern Ireland Human Rights Commission's role?

Our role is to make sure government and public authorities protect, respect and fulfil the human rights of everyone in Northern Ireland.

We can do this by advising government on their compliance with human rights law and standards, taking strategic legal cases and promoting awareness of human rights.

All of our work and advice is based on the international human rights treaties ratified by the United Kingdom government, domestic legislation and relevant soft law standards.

What is the Northern Ireland Human Rights Commissions position on the current level of Covid-19 restrictions in Northern Ireland?

The Northern Ireland Human Rights Commission asks everyone to follow the Government's advice and to all play our part in ensuring we get through this crisis.

We acknowledge that current emergency powers being taken by government are unprecedented and far-reaching.

It does not mean that human rights take a back seat altogether. We are reviewing the restrictions against human rights law and standards.

We will advise government and the Northern Ireland Executive if we believe any restriction is in violation of human rights law and standards.

As we continue to monitor this area, we welcome feedback on your experience of the powers in practice in Northern Ireland.

Get in touch

If you want further information or you wish to contact the Commission about a human rights-related query, you can contact us via phone or email.

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You can find out more about the Commissions work and access our advice to government on our website www.nihrc.org