

# Civil and political rights in Great Britain

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Executive summary  
March 2020



This is an executive summary of the Equality and Human Rights Commission's report to inform the UN Human Rights Committee's forthcoming examination of the UK's compliance with the International Covenant on Civil and Political Rights (ICCPR). The report covers England and Wales for all issues and Scotland for issues that are reserved to the UK Parliament.

In the report, we focus on relevant developments and evidence since the UK's last review in 2015 by the UN Human Rights Committee, which is the body that oversees implementation of the ICCPR. We indicate where progress has been made and highlight the main concerns or challenges of implementing the ICCPR.

To recognise the diversity of lived experiences, and the importance of equality and non-discrimination to the full realisation of all ICCPR rights, we have included information about the experience of those sharing particular protected characteristics, including an analysis of multiple disadvantage, where evidence allowed.

The report contains 12 sections, covering the issues that we recommend as priorities for the UN Human Rights Committee. The summary below sets out our key concerns.

The full report includes a list of our recommendations to the UK and Welsh Governments. Please visit our website to read the full report, with references, and a standalone list of our recommendations.



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## 1. Enhancing the status of international human rights in domestic law

The UK's departure from the EU has given rise to significant constitutional uncertainty, posing potential risks for the protection of human rights. In particular, the removal of the EU Charter of Fundamental Rights from domestic law through the EU Withdrawal Act<sup>1</sup> may result in a loss or weakening of some rights protections. The UK Government's ongoing commitment to the Human Rights Act 1998<sup>2</sup> (HRA) remains unclear amid recently announced plans to establish a Constitution, Democracy and Rights Commission.

Certain ICCPR rights are not covered by the HRA, and some provisions of the Equality Act 2010<sup>3</sup> (EA) that would provide greater protection of ICCPR rights are not in force. The UK Government has not yet ratified the Optional Protocol to the ICCPR, which would allow individual complaints to the UN Human Rights Committee, and maintains a number of reservations against provisions of the ICCPR.



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## **2. Accountability for human rights violations and complicity by British military abroad**

The scale of abuse of Iraqi citizens by British service personnel, between 2003 and 2009, remains unknown. The lack of an overarching inquiry into these allegations means that potential systemic issues have not been investigated independently. Separately, we are also concerned by the UK Government's proposal to introduce a 'statutory presumption' against the prosecution of current or former military personnel for alleged offences dating back more than 10 years.

There has not yet been a comprehensive independent investigation into allegations of torture or ill treatment of detainees held by other governments, in which UK security and intelligence agencies have been implicated, including by means of complicity. The UK Government's revised guidance to intelligence officers and service personnel on the detention and interviewing of detainees overseas does not sufficiently address our concerns regarding the obligation to cease engagement where there is a risk of torture.



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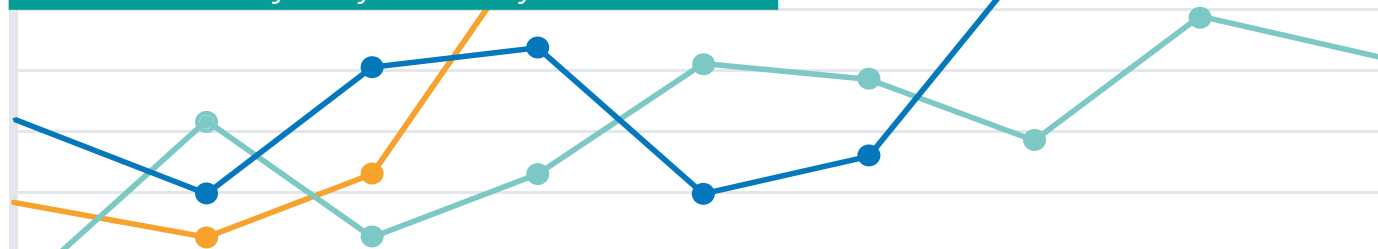
### 3. Counter-terrorism measures

Several aspects of UK counter-terrorism law and policy have the potential to violate the UK's obligations under ICCPR. We have grave concerns over the UK Government's decision to expand police powers to question and detain individuals at airports and ports without introducing a reasonable suspicion threshold.

There are also concerns that the Prevent duty – which obliges certain public bodies to report concerns about people who may be at risk of being drawn into terrorism – is discriminatory and risks undermining freedom of speech, the right to private life and the right to manifest a religion. Although the UK Government announced a review of Prevent in January 2019, its scope and independence have been criticised.

Since 2016, there has been a rapid increase in the use of deprivation of citizenship orders to deal with terrorist suspects. There are insufficient safeguards to ensure that citizenship deprivation will not render individuals stateless. The UK Government has also deviated from its usual practice of seeking diplomatic assurances over the use of the death penalty, when extending mutual legal assistance to the United States over the possible prosecution of two British terrorist suspects in July 2018.

Police-recorded hate crime in England and Wales has increased year on year, and has more than doubled since 2012/13, with the majority racially motivated.



#### 4. Equality and non-discrimination

Police-recorded hate crime in England and Wales has increased year on year, and has more than doubled since 2012/13,<sup>4</sup> with the majority racially motivated.<sup>5</sup> While the police have improved their practices for recording hate crimes, a recent inspection highlighted that inaccuracies in the recording of data remain. A significant number of hate crime cases drop out of the criminal justice process, and only 4% result in a successful conviction with a recorded uplift in the sentence.<sup>6</sup>

Racial disparity in the use of stop and search powers is pronounced, and has increased in recent years.<sup>7</sup> Young Black African-Caribbean men are significantly over-represented in the Metropolitan Police Service Gangs Matrix,<sup>8</sup> a tool used to identify and risk-assess gang members in London. Research suggests that the police treat Gypsy, Roma and Traveller ethnicities as a 'risk factor'. Ethnic minority detainees are over-represented in the prison population,<sup>9</sup> and Black or Black British ethnic groups are also more likely to be detained under the Mental Health Act 1983 than people from White ethnic groups.<sup>10</sup>



There has been a lack of comprehensive evidence and impact assessments to underpin decision-making and ensure that the reforms do not disproportionately disadvantage groups with protected characteristics, or undermine access to justice.

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## 5. The right to an effective remedy and fair trial

We remain concerned that changes to the civil legal aid regime in England and Wales have restricted access to justice, including for people seeking redress for human rights breaches, with a disproportionately negative impact on people sharing certain protected characteristics. The UK Government's proposals to reform and modernise courts and tribunals in England and Wales may provide opportunities to improve access to justice. However, there has been a lack of comprehensive evidence and impact assessments to underpin decision-making and ensure that the reforms do not disproportionately disadvantage groups with protected characteristics, or undermine access to justice.

The UK's procedure for identifying and determining statelessness suffers from a number of problems, including long delays and the use of administrative detention without a defined time limit. Individuals applying to be recognised as stateless have neither a right to free legal assistance nor a right to appeal decisions at an immigration tribunal.





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## **6. Right to life, freedom from torture and ill treatment, and conditions in detention**

We have a range of concerns about conditions and treatment in adult prisons in England and Wales including overcrowding, poor and insanitary conditions, high imprisonment rates (particularly in Wales), a rise in levels of self-harm and assaults, the number of deaths in custody, high levels of force used on prisoners, and inadequate pregnancy and maternity care and mental health care.

The youth secure estate has seen a rise in self-harm incidents, failures to keep children in secure training centres and young offender institutions safe from physical or sexual abuse, a lack of adequate time outside cells and the increasing use of segregation. There has been a substantial rise in the use of restraint, including pain-inducing restraint, and the UK Government's review of the use of pain-inducing restraint on young people in detention has yet to report. There is evidence that Tasers and spit hoods are used on children without adequate risk assessments.





A number of measures have been put in place in England to improve patient safety in health and social care, including the creation of the Healthcare Safety Investigation Branch (HSIB) to investigate patient safety incidents. However, we are concerned about the inadequate number of investigations the HSIB can take on annually. While the Health and Social Care (Quality and Engagement) (Wales) Bill<sup>11</sup> in Wales aims to strengthen processes for raising concerns, there is no requirement for NHS trusts in Wales to appoint a Freedom to Speak Up Guardian and there remains no independent body to investigate patient safety incidents.

There is evidence of a range of issues in mental health settings, including the use of force, long-term segregation and night-time confinement of patients in high secure hospitals in England.

There have, however, been a number of developments, including the introduction of the Mental Health Units (Use of Force) Act 2018 in England.<sup>12</sup> In Wales, there have been reports of oppressive and intimidating behaviour by staff, with 48 uses of facedown restraint in Wales in 2017/2018.<sup>13</sup>

We are concerned that UK Government guidance on the use of force in schools in England does not provide sufficient safeguards. In England, parents, and those acting 'in loco parentis', charged with the common assault of a child can still rely on the common law defence of 'reasonable punishment'. Following a Welsh Government consultation in 2018, the National Assembly for Wales has recently legislated to remove this defence.<sup>14</sup>



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## 7. Violence against women and girls (VAWG)

Sexual violence and domestic abuse are a persistent and growing issue. There is insufficient funding for VAWG services, particularly specialist provision, and survivors with insecure immigration status and no recourse to public funds face gaps in protections. While the Welsh Government has legislated<sup>15</sup> to improve the prevention of VAWG and the support of survivors, there are concerns about the inconsistency of services being delivered, insufficient coordination within and between the Welsh Government and local authorities, and a lack of funding for specialist services.

The UK Government has adopted a number of legislative and policy measures to improve the criminal justice response to VAWG in England and Wales, such as the introduction of the offence of controlling or coercive behaviour in intimate or familial relationships in the Serious Crime Act 2015.<sup>16</sup> A Domestic Abuse Bill proposes a number of new measures, including a statutory definition of domestic abuse.<sup>17</sup> We have recommended a number of improvements to the Bill, including the need for a duty on the UK Government to fund support services adequately and ensure they are available to all, regardless of immigration status.

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Justice system responses to VAWG remain inadequate. Crown Prosecution Service data shows that the number of police referrals, charges, prosecutions and convictions for rape has declined sharply.<sup>18</sup> We are also concerned that the threat of information sharing by public service providers for the purposes of immigration control may prevent survivors from seeking protection and support, including from the police.

The UK has still not ratified the Convention on Preventing and Combating Violence Against Women and Domestic Violence (known as the Istanbul Convention),<sup>19</sup> and needs to put in place changes to law, policy and practice to enable ratification.



The practice of indefinite immigration detention has drawn widespread criticism.



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## 8. Deprivation of liberty

The practice of indefinite immigration detention has drawn widespread criticism, and may contribute to violations of the prohibition on torture, inhuman and degrading treatment for individuals at heightened risk of being harmed by the experience of detention. There are concerns that existing policies to protect individuals at particular risk of harm in immigration detention are inadequate, and detainees with serious mental health conditions face barriers in asserting their right to challenge the decision to detain them. Recent parliamentary inquiries have highlighted the prison-like conditions in immigration removal centres. While the number of children in immigration detention has fallen since 2010, when the UK Government announced it would end the practice, children continue to be detained.<sup>20</sup>

The number of inpatients with learning disabilities and/or autism in hospitals indicates that the UK Government has failed in its aim of developing appropriate community-based services to support such individuals. The inappropriate detention of children and young people with learning disabilities in mental health hospitals has been the subject of a recent Joint Committee on Human Rights inquiry. We are also concerned that the UK Government has failed to establish sufficient safeguards around deprivation of liberty for people who are deemed to lack capacity. The devolution of health and social care in Wales results in differences in implementation and data collection, with a lack of official data on the length of hospital admission for people with learning disabilities in Wales.

We are concerned that the UK's withdrawal from the EU may weaken victims' right to support.

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## 9. Human trafficking and modern slavery

Since the Modern Slavery Act (MSA) came into force in 2015,<sup>21</sup> there has been a growing number of referrals of potential victims of trafficking or modern slavery to the National Referral Mechanism. However, this remains low when compared with estimates of the number of victims in the UK. We are concerned that the UK's withdrawal from the EU may weaken victims' right to support.

We have identified a number of weaknesses in the MSA, which were mirrored in the recommendations of the 2019 Independent Review of the MSA. The Welsh Government has established initiatives to tackle slavery and provide support for survivors, but there has been no assessment or evaluation of their effectiveness.





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## 10. Right to privacy and freedom of expression

New digital technologies, data use and data sharing pose challenges to the rights to privacy and freedom of expression, particularly given the scale and pace of technological change.

Regarding surveillance powers and mass data retention, the Investigatory Powers Act 2016 (IPA)<sup>22</sup> introduced a new statutory framework for UK law enforcement and intelligence agencies to conduct targeted interception of communications for ‘equipment interference’ and the acquisition and retention of communications data and bulk personal datasets.

The IPA did introduce certain new safeguards, but significant concerns remain regarding various aspects of the UK’s surveillance and data retention framework, and the continued parallel operation of the IPA and parts of the Regulation of Investigatory Powers Act 2000<sup>23</sup> leads to complexity and potential confusion.





The legal framework authorising and regulating the use of Automated Facial Recognition technology is insufficient.

The use of new technologies in policing has become an increasing concern in recent years; the use of automated facial recognition technology (AFR) by South Wales Police is the subject of an ongoing legal challenge.<sup>24</sup> The legal framework authorising and regulating the use of AFR technology is insufficient, and there are questions about whether the technology is inherently disproportionate and inaccurate. Evidence indicates that many AFR algorithms disproportionately misidentify Black people and women, and therefore operate in a potentially discriminatory manner. Despite such concerns, the Metropolitan Police Service announced in January 2020 that it would begin using AFR technology in specific locations in London. Certain police forces are already using, or planning to use, other predictive

policing technologies, including the use of algorithms to analyse data and identify patterns. Such technologies may replicate and magnify patterns of discrimination in policing, and could have a chilling effect on freedom of association and expression.

The importance of free expression in universities is enshrined in the domestic legal framework. However, the Joint Committee on Human Rights has found that the Prevent duty, among other factors, is inhibiting free speech at universities, and the Prevent duty guidance for higher education institutions has been subject to legal challenge. We are also concerned that the UK Government's proposals to improve online safety risk infringing individuals' freedom of expression.



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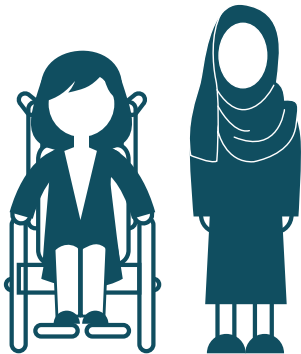
## 11. Rights of the child

There has been an increase in the number of asylum applications by unaccompanied children,<sup>25</sup> who face 'systemic delays' in the processing of such applications.<sup>26</sup> While unaccompanied children in Europe with relatives in the UK can currently apply to join them under the Dublin III Regulation, the UK's post-Brexit obligations regarding family reunification are unclear. The UK does not currently allow child refugees to sponsor close relatives to join them in the UK.

Under certain circumstances, undocumented children in the UK can register as British citizens. In December 2019, the UK High Court found the fee regime for such children to register as British citizens to be unlawful.<sup>27</sup>

In England and Wales the age of criminal responsibility is 10, which is inconsistent with accepted international standards and counter to mounting evidence that criminalisation makes children more likely to reoffend as adults. Any increase in the age of criminal responsibility would need to be accompanied by the development of a welfare-based system.

Women, ethnic minorities and disabled people continue to be under-represented.



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## 12. Right to participate in public life

The UK Government has made a policy change to allow prisoners on temporary licence to vote, following the European Court of Human Rights' ruling<sup>28</sup> that the UK's blanket ban on prisoner voting was disproportionate and indiscriminate, in violation of the right to free elections. We are concerned about whether this policy change meets the UK's obligations under the ICCPR. The Welsh National Assembly's Equality, Local Government and Community Committee has recommended the introduction of legislation that gives Welsh prisoners serving custodial sentences of less than four years

the right to vote in devolved Welsh elections. The Welsh Government has accepted this recommendation.

There remains a lack of diversity in political representation, as women, ethnic minorities and disabled people continue to be under-represented. There are serious data gaps in this area; section 106 of the EA 2010, if implemented, would require political parties to report on the diversity of their candidates. A UK parliamentary inquiry found that women candidates are disproportionately subjected to intimidation, with Black and Asian women MPs receiving more abuse than White women MPs.

### References

- <sup>1</sup> [European Union \(Withdrawal Agreement\) Act 2020](#) [accessed: 5 February 2020].
- <sup>2</sup> [Human Rights Act 1998](#) [accessed: 5 February 2020].
- <sup>3</sup> [Equality Act 2010](#) [accessed: 5 February 2020].
- <sup>4</sup> Rising from 42,255 offences in 2012/13 to 103,379 in 2018/19: Home Office (2019), '[Hate Crime, England and Wales, 2018/19](#)' [accessed: 21 October 2019].
- <sup>5</sup> Accounting for 76% of all police-recorded hate crime in 2018/19: Home Office (2019), '[Hate Crime, England and Wales, 2018/19](#)' [accessed: 21 October 2019].
- <sup>6</sup> Walters, M. A., Wiedlitzka, S and Owusu-Bempah, A. (2017), '[Hate crime and the legal process: options for law reform: Project Report](#)' [accessed: 8 March 2019].
- <sup>7</sup> Home Office (2019), '[Police powers and procedures, England and Wales, year ending 31 March 2019](#)' [accessed: 29 October 2019].
- <sup>8</sup> Mayor's Office for Policing and Crime (2018), '[Review of the Metropolitan Police Service Gangs Matrix](#)' [accessed: 29 October 2019].
- <sup>9</sup> As of June 2019, ethnic minority detainees made up 27% of the prison population, compared with 13% of the general population: Ministry of Justice (2019), '[Offender Management statistics quarterly: January to March 2019](#)' [accessed: 22 October 2019]; House of Commons (2019), '[UK prisons population statistics, number CBP-04334, 23 July 2019](#)' [accessed: 22 October 2019]. General population figures from 2011 Census of England and Wales.
- <sup>10</sup> Office for National Statistics (2019), '[Detentions under the Mental Health Act: ethnicity facts and figures](#)' [accessed: 29 October 2019].
- <sup>11</sup> Welsh Government (2019), '[Written Statement: Introduction of the Health and Social Care \(Quality and Engagement\) \(Wales\) Bill](#)' [accessed: 15 October 2019].
- <sup>12</sup> [Mental Health Units \(Use of Force\) Act 2018](#) ('Seni's Law').
- <sup>13</sup> Healthcare Inspectorate Wales (2019), '[Mental Health, Learning Disability Hospitals and Mental Health Act Monitoring: Annual Report 2017-2018](#)' [accessed: 30 September 2019].
- <sup>14</sup> [The Children \(Abolition of Defence of Reasonable Punishment\) \(Wales\) Bill](#) was agreed by the Welsh Assembly on 28 January 2020 [accessed: 5 February 2020].
- <sup>15</sup> [Violence Against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#) [accessed: 5 February 2020].
- <sup>16</sup> [Serious Crime Act 2015](#) [accessed: 3 December 2019].
- <sup>17</sup> UK Parliament, '[Domestic Abuse Bill 2017-19 to 2019-20](#)' [accessed: 15 October 2019].
- <sup>18</sup> The CPS records 'rape flagged' cases, which means it includes cases that followed an allegation of rape, but which may have resulted in another offence, such as sexual assault, being charged and / or convicted: see CPS (2019), '[Violence Against Women and Girls Report 2018–19](#)', p. 13 [accessed: 13 September 2019].
- <sup>19</sup> [Preventing and Combating Violence Against Women and Domestic Violence \(Ratification of the Convention\) Act \(2017\)](#) [accessed: 13 September 2019].
- <sup>20</sup> Refugee Council Information (May 2019), '[Detention of Children](#)' [accessed: 2 September 2019]. 85 children entered immigration detention in 2018: Home Office (2019), '[Detention data tables immigration statistics year ending June 2019](#)', Table dt\_02 [accessed: 22 October 2019].
- <sup>21</sup> [Modern Slavery Act 2015](#) [accessed: 9 March 2019].
- <sup>22</sup> [Investigatory Powers Act 2016](#) [accessed: 5 February 2020].
- <sup>23</sup> [Regulation of Investigatory Powers Act 2000](#) [accessed: 5 February 2020].
- <sup>24</sup> Bridges, R (On Application of) v The Chief Constable of South Wales Police [2019] EWHC 2341 (Admin).
- <sup>25</sup> Home Office (2019), '[Asylum and resettlement summary tables, year ending June 2019 second edition](#)', Table Asy\_01a [accessed: 31 October 2019].
- <sup>26</sup> Elder Rahimi Solicitors (2018), '[Systemic Delays in the Processing of the Claims for asylum made in the UK by Unaccompanied Asylum Seeking Children \(UASC\)](#)' [accessed: 2 September 2019].
- <sup>27</sup> PRCBC & Ors v Secretary of State for the Home Department [2019] EWHC 3536 (Admin).
- <sup>28</sup> Hirst v the United Kingdom (No. 2) (application no. 74025/01), 6 October 2005.

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