Newcastle University

Article 22: An initiative on economic, social and cultural rights in the UK

Towards an Economic, Social and Cultural Rights Bill

Explanatory Notes

to the Consultation Draft of the

Economic, Social and Cultural Rights Bill

12 April 2019

Economic, Social and Cultural Rights Bill

EXPLANATORY NOTES

This document has been prepared in order to help explain the Economic, Social and Cultural Rights Bill that the Article 22 initiative at Newcastle University is consulting on. Its text is mostly the same as the text of the footnotes in the 'Bill with footnotes' available on the consultation's web page. A version of the Bill without footnotes is also accessible from that page.

Short title

The short title of the Bill reflects the title of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is the main treaty to which the Bill is intended to give further effect.

Long title

The long title assumes that the enacted Bill would apply to the UK, as does the Human Rights Act 1998. However, this is only an assumption for the purpose of drafting, and territorial application will depend on many factors, including devolution legislation, and the human rights policies and initiatives of the devolved administrations, such as the recent recommendations of the Scottish First Minister's Advisory Group on Human Rights Leadership.

Preamble

A preamble has been included in order to help explain the context for the Bill for the purposes of consultation. The inclusion of preambles to public Acts of Parliament appears to be a practice that has been discontinued, though they are still included in private Acts[1] and orders.[2]

Paragraph (1): this is based on the opening preambular paragraph of the Universal Declaration of Human Rights: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

Paragraph (2): this is based on the third preambular paragraph of the Universal Declaration of Human Rights: "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law", and UK history.

Paragraph (3): the UK Parliament has outlined the development of parliamentary authority. See also 'Struggles for Human Rights in Britain: A Reading List', prepared by Dr Rachel Hammersley, Senior Lecturer in Intellectual History, Newcastle University.

[1] E.g., the University of London Act 2018.
[2] E.g., The Land Registry Trading Fund (Extension and Amendment) Order 2018.

Paragraph (4): this paragraph lists some of the main legal instruments and Acts of the Westminster Parliament which have been enacted to further social justice and protect human rights over the centuries, and particularly over the last two centuries.

Paragraph (5): the values mentioned in this paragraph are referred to in the preamble of the outline 'UK Bill of Rights and Freedoms' set out in the report of the House of Lords & House of Commons Joint Committee on Human Rights entitled 'A Bill of Rights for the UK?'[3] (2008 Outline Bill), with the addition of 'solidarity'.

Paragraph (6): the UK voted in favour of the Universal Declaration of Human Rights at the 183rd plenary meeting of the UN General Assembly on 10 December 1948 (A/777, page 933).

Clause 1: The purpose of the Act

This Clause has been drafted on the bases that all human rights are interrelated, interdependent and indivisible, that human rights which the UK has accepted in international law should be put into our national law as human rights, and that economic, social and cultural (ESC) rights should in principle be no less enforceable than civil and political rights.

As the ICESCR is the most important treaty containing ESC rights, the Bill focuses on them, supplemented in a few instances by the 1961 European Social Charter.

ICESCR was adopted by the UN General Assembly on 16 December 1966. It was signed and ratified by the United Kingdom on 16 September 1968 and 20 May 1976, respectively. There are 169 State Parties.

The European Social Charter is a Council of Europe treaty opened for signature in 1961. It was signed and ratified by the United Kingdom on 18 October 1961 and 11 July 1962, respectively. There are 27 State Parties (of which 14 are also party to the Revised Social Charter of 1996, which includes additional rights, and which the UK has signed but not ratified). More information on the Charter and the UK's compliance with it is provided in the consultation document and Tables on the consultation web page.

The UK has also ratified the six treaties in clause 1(3)(a)-(f), which also include economic, social and cultural rights to greater or lesser extent and which are amongst the nine 'core international human rights instruments'; ICESCR is the seventh that the UK is bound by. The UK has neither signed nor ratified the remaining two: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of All Persons from Enforced Disappearance.

The UK has been bound by the Convention Relating to the Status of Refugees since 1954 (clause 1(3)(g)), and by the European Convention for the Protection of Human Rights and Fundamental Freedoms since 1953 (clause 1(3)(h)).

[3] Twenty–ninth Report of Session 2007–08. 21 July 2008. Report, together with formal minutes, page105.

Clause 2: The rights, and associated obligations

This Clause establishes that everybody has the rights covered by the Bill, and sets out the consequent obligations of public authorities, including ministers.

The rights are set out in Schedule 1 of the Bill. They have been drafted for now in a short illustrative form in order to convey their essence for the purposes of consultation and debate, as follows:

Economic rights

1. Everyone has the right to work.
2. Everyone has the right to vocational training and guidance.
3. Everyone has the right to the enjoyment of just and favourable conditions of work.
4. Everyone has the right to form trade unions and join the trade union of their choice for the promotion and protection of their economic and social interests.
5. Trade unions have the right to establish national federations or confederations and those confederation have the right to form or join international trade-union organizations.
6. Trade unions have the right to function freely.
7. All workers and employers have the right to bargain collectively, and the right to collective action in cases of conflicts of interest, including the right to strike.

Social rights

8. Everyone has the right to social security, including social insurance.
9. Everyone without adequate resources has the right to social and medical assistance.
10. Everyone has the right to benefit from social welfare services.
11. Everyone has the right to an adequate standard of living for that person and their dependants, including adequate food, water, sanitation, clothing and housing, and to the continuous improvement of living conditions.
12. Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.
13. Everyone has the right to education.

Cultural rights

14. Everyone has the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications.
15. Everyone has the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author.

Non-discrimination

16. The exercise of these rights is guaranteed without discrimination of any kind, such as to race; national, ethnic or social origin; nationality; birth; sex; pregnancy and maternity; marital and family status; sexual orientation; gender identity or reassignment; language; religion or belief; political or other opinion; age; disability; health, economic or social status; property; place of residence or other status.

More information on each of the rights is contained in the 'The Rights: background information' document.

The language of the obligations in Clause 2(2), and of the definitions in Clause 2(4), reflects the international law obligations of a State:

> "By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights" (UN Human Rights, Office of the High Commissioner).

Clause 2(5) reflects the statements of the Committee on Economic, Social and Cultural Rights (CESCR), the independent monitoring body of ICESCR, as to the effect of the obligation on a party under ICESCR, Article 2.1, which provides that it must:

> "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

The CESCR has stated that this obligation is:

> "of immediate effect…Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant",

and that the:

> "principal obligation of result reflected in article 2 (1) is to take steps 'with a view to achieving progressively the full realization of the rights recognized' in the Covenant….[T]he phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal." (General Comment 3, paragraphs 1, 2 and 9).

The purpose of Clause 2(6) is to ensure that the realisation of the rights is an obligation which the government is required to address at the beginning of each session of Parliament. An example of a similar obligation, albeit with a different trigger, is the climate change adaptation programme under the Climate Change Act 2008, section 58.

Clause 2(8) is intended to ensure that the function of the Equalities and Human Rights Commission to monitor the effectiveness of equality and human rights enactments under section 11(1) of the Equality Act 2006 will extend, once enacted, to this Bill.

Clause 3: Pre-legislative scrutiny

The purpose of this Clause is to improve consideration of the rights and associated obligations before legislation is enacted in order to lessen the chances of it being incompatible with the rights.

The Human Rights Act 1998 (HRA) requires ministers in charge of Bills to state before second reading whether their provisions are compatible with the Convention rights (section 19). No reasons for the ministers' views need be given.

In 2008, the House of Lords and House of Commons Joint Human Rights Committee (JHRC) stated that "there is considerable room for improvement in the information currently provided to parliament about whether a measure is compatible with human rights", citing stronger mechanisms in other countries and recommending enhanced democratic scrutiny (2008 Outline Bill report, paragraphs 225-226). This is in line with the recommendation of the Committee on Economic, Social and Cultural Rights (CESCR) to the UK in 1997 to consider "a human rights assessment or impact statement be made an integral part of every proposed piece of legislation or policy initiative on a basis analogous to environmental impact assessments or statements" (para. 33).

Such enhancements could take one or more of several forms, such as: publishing draft Bills,[4] publishing memoranda when Bills are introduced,[5] obtaining the Attorney General's legal advice on compatibility,[6] conducting an impact assessment, and scrutiny by a parliamentary committee[7] and/or by a human rights institution.

Clause 3 adopts for the purposes of illustration the requirement of an initial impact assessment which would be submitted to the JHRC and possibly human rights institutions, with a requirement for ministers to consider responses before a final assessment, and extends these obligations to government amendments to Bills, statutory instruments and Orders-in-Council as suggested by the JHRC. The provisions on the content of the assessment suggested have drawn on the 'brief note for decision-makers' on equality impact assessments published by the Equalities and Human Rights Commission.

[4] For example, section 16 of the EU (Withdrawal) Act 2018 required the government to publish a draft Bill on post-Brexit environmental principles and an enforcement authority.

[5] The JHRC has recommended on several occasions that government Departments should "publish a detailed human rights memorandum on introduction of a Bill—and certainly before Second Reading—in order to ensure effective human rights scrutiny in Parliament and beyond". Recent examples of this non-statutory model include memoranda on the Mental Capacity (Amendment) Bill and on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

[6] As was reported by the JHRC to be the mechanism in New Zealand (2008 report, paragraph 226)

[7] For example, as required by section 30 of Victoria, Australia's Charter of Human Rights and Responsibilities Act 2006.

Clause 4: Declaration of incompatibility

This Clause governs the power of the courts to declare primary or secondary legislation incompatible with any of the rights. It mirrors section 4 of the HRA, with three modifications.

The Upper Tribunal and the Employment Appeal Tribunal are added to the definition of a "court" in clause 4(5) as they are 'superior courts of record'[8] whose jurisdictions encompass and impact on economic, social and cultural rights.

There has been much academic discussion about the non-binding nature of declarations of incompatibility under HRA section 4, compared with other countries.[9] The debate centres around the separation of powers and relates to whether 'the final say' on human rights violations should lie with the (unelected) courts or with Parliament or at least with the elected House of Commons. This will be a critical issue for the enactment of a Bill of this nature, which requires widespread debate.

For the purposes of that debate, clause 4(6) departs from the position under the HRA and creates a rebuttable presumption that findings of incompatibility will be binding and followed unless the House of Commons resolves otherwise.

An alternative, which increased the legislature's power over the executive but which fell short of creating a presumption, would be to require ministers to remedy the incompatibility if the House of Commons resolved to that effect.[10]

Clause 4(7) is an additional provision which allows a court to order 'meaningful engagement'. This means ordering the parties to resolve their differences in line with their respective constitutional and statutory duties and rights, and to report subsequently back to the court. It has been described as a more participatory form of justice to which socio-economic rights may be well suited.[11]

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[8] See, respectively, section 3(5) of the Tribunals, Courts and Enforcement Act 2007, and section 20(3) of the Employment Tribunals Act 1996.

[9] See especially Stephenson, S. *From Dialogue to Disagreement in Comparative Rights Constitutionalism*. The Federation Press, 2016; Gardbaum, S. *The New Commonwealth Model of Constitutionalism*. Cambridge: Cambridge University Press. 2013. Tushnet, M. *Weak Courts, Strong Rights Judicial Review and Social Welfare Rights in Comparative Constitutional Law*. Princeton University Press, 2007. King, J. *Rights and the Rule of Law in Third Way Constitutionalism*. 30 Const.Comment. 101, July 2015. Kavanagh, A. What's so weak about "weak-form review"? A rejoinder to Stephen Gardbaum. *International Journal of Constitutional Law*, Volume 13, Issue 4, 1 October 2015, Pages 1049–1053. Geiringer, C. From Dialogue to Disagreement in Comparative Rights Constitutionalism. *International Journal of Constitutional Law*, Volume 15, Issue 4, 3 November 2017, Pages 1247–1254.

[10] Yet another, and weaker still alternative, but which went beyond the HRA, was proposed in the 2008 Outline Bill, Clause 10. Within three months of a declaration of incompatibility, Ministers would be required to make a written statement explaining either that they agree the provision is incompatible with any of the rights, or that they disagree. If they disagree, they must give their reasons. If they agree, they must state whether they propose to remedy the incompatibility. If they propose to do that, they would have to make another written statement explaining in detail how the incompatibility would be remedied within six months of the declaration. The court would be empowered to consider whether the incompatibility had been remedied.

[11] This was done by the South African Constitutional Court in a housing eviction case, *Occupiers of 51 Olivia Road, Berea Township,* Case CCT 24/07, 19 February 2008. Van Bueren, G. *The New Social Contract - A Dignified Life for both the Poor and the Wealthy*. 2018. See also Pillay, A. (2012). Towards effective social and economic rights adjudication: the role of meaningful engagement. *International Journal of Constitutional Law* **10**(3): 732-755.

Clause 4(8) refers to the right of the Crown to intervene in cases where a court is considering whether to make a declaration of incompatibility. To help the readability of the consultation draft, the text for this - which appears in HRA section 5 - is set out in Schedule 2.

Clause 5: Acts of public authorities

This Clause establishes the basic rule that it is unlawful for a public authority to act incompatibly with any of the rights, and sets out limitations to that rule. It mirrors HRA section 6, with modifications as explained below.

Because the Bill contains express duties on public authorities which are not contained in the HRA – namely to respect, protect and fulfil the rights set out in Schedule 1, and to take measures to the maximum of available resources with a view to achieving progressively the full realization of the rights (clause 2(2) and (3)) – it is necessary to ensure that acts of public authorities which align with those duties would not be unlawful (clause 5(2)(c)).

Carefully drafted provisions are necessary to delineate and balance the respective roles of the courts and public authorities on economic, social and cultural rights (clause 5(3) and (4)). The matters set out in sub-clauses (3)(a), (b) and (4) are included in the 2008 Outline Bill (page 111).

As regards an order for meaningful engagement (sub-clause (3)(c)), see above in relation to Clause 4(7).

In view of the 'principle of non-regression' derived from the duty of progressive realisation, it is necessary to make explicit the *prima facie* unlawfulness of regressive measures - clause 5(5)-(7). These provisions draw on the criteria developed by the Committee on Economic, Social and Cultural Rights for justifying regressive measures.[12]

Clause 5(9) is intended to provide guidance on the meaning of 'functions of a public nature', whilst maintaining flexibility for courts to make decisions on a case-by-case basis. It is based on the judgments of Baroness Hale and Lord Nicholls in cases in 2007 and 2003 respectively.[13]

Under section 6(6) of the HRA, acts include failures to act except for failures to (a) introduce in, or lay before Parliament, a proposal for legislation, and (b) make primary legislation or

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[12] As in for example General Comment 13 (The right to education), para. 49; General Comment 14 (The right to the highest attainable standard of health), para. 32; General Comment 15 (The right to water), para. 19; General Comment 18 (The right to work), paras. 21 and 34; General Comment 19 (The right to social security), para 42. See also the letter to the UK, dated 8 April 2016, from the Special Rapporteurs on extreme poverty and human rights, housing, the rights of persons with disabilities and the right to food concerning the Welfare Reform and Work Act 2016; the 2013 Report of the Special Rapporteur on the human right to safe drinking water and sanitation, A/HRC/24/44, paragraphs 13-17; and Nolan, A. Lusiani, NJ, Courtis, C. Two steps forward, no steps back? Evolving criteria on the prohibition of retrogression in economic and social rights. In: Nolan, A. (ed.) *Economic and Social Rights after the Global Financial Crisis*. CUP, 2014. pp.121-145, esp. p.140).

[13] Baroness Hale in *YL v. Birmingham City Council & Ors* [2007] UKHL 27 (paragraphs 61-72), and Lord Nicholls in *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v. Wallbank & Anor* [2003] UKHL 37 (paragraphs 6-12).

remedial orders. Clause 5(11)(b) would maintain the latter exception, in view of Parliamentary supremacy. The duties to respect, protect and fulfil the rights set out in Schedule 1, and to take measures to the maximum of available resources with a view to achieving progressively full realization of the rights, will often involve the making of secondary legislation. The effect of the Bill would be significantly weakened if all failures to make bring forward such secondary legislation were excluded. This provision therefore includes those failures where Parliament has required or empowered ministers to make secondary legislation if not introducing or laying it would amount to a breach of those duties. It would not affect the power of either House of Parliament to annul or approve statutory instruments containing secondary legislation (the so-called 'negative' or 'affirmative' procedures).

In addition, Clause 5(2)(a) and (b) – which have not been modified – raise the issue and acceptability of a government department seeking to defend legal challenges by relying on primary legislation promoted by it.

Clause 6: Proceedings

This Clause governs who can take a case to court.

It mirrors section 7 of the HRA, but goes further in sub-clause (1) by allowing natural and legal persons with a sufficient interest to bring proceedings as well as individual victims. This is in line with the nature of the rights in Schedule 1 being both individual and collective.

Clause 6(8) raises the issue of the power of tribunals to award damages, which is limited and can prevent justice being done in a case, for example in cases involving social security benefits or employment rights. This is a matter that merits consideration during the consultation.

Clause 6(11) is intended to ensure that legal aid will be available for advice and representation in connection with potential violations of the rights by amending the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In March 2018, the Equalities and Human Rights Commission reiterated its concern about the removal of most cases about social security, employment, housing, debt, immigration and family law from the scope of legal aid under that Act.

Clause 7: Judicial remedies

This Clause covers remedies. It mirrors section 8 of the HRA.

Clause 7(2) would only allow damages to be awarded for violations if the court or tribunal had that power. As noted in relation to Clause 6(8), tribunals are limited in their power to award damages which can prevent justice being done in a case. This is a matter that merits consideration during the consultation.

Clause 8: Limitations

Almost all human rights are subject to limitations. The HRA does not include a substantive generic limitations provision as the European Convention rights were drafted with limitations formulated on a right-by-right basis. ICESCR contains both generic and a small number of right-specific limitations. For illustration purposes clause 8 is based on the generic limitation in ICESCR Article 4.

Other versions: cf. European Social Charter, Restrictions, Article 31.1 [repeated verbatim in the 1996 Revised ESC, Article G]:

> "1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals."

Cf. 2008 Outline Bill, Clause 5, Limitation of Rights:

> "The rights and freedoms contained in this Bill may be subject only to such reasonable limits, provided for by law, as can be demonstrably justified in a society based on the values of liberty, democracy, fairness, civic duty and the rule of law, and to the extent compatible with international human rights treaties to which the UK is a party, taking into account all relevant factors, including:
>
> (a) the nature of the right;
>
> (b) the importance and legitimacy of the purpose of the limitation;
>
> (c) the nature and extent of the limitation;
>
> (d) the relation between the limitation and its purpose; and
>
> (e) the availability of less restrictive means to achieve the purpose."

The HRA, via the European Convention on Human Rights, also includes a provision prohibiting abuse of rights:

> "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention".

This is repeated almost verbatim in the ICESCR, Article 5.1.

Clause 9: Safeguard for existing human rights

This Clause mirrors HRA section 11. It is intended to ensure that other human rights are not adversely affected by the Bill.

Clause 10: Orders etc. under this Act

This Clause mirrors HRA section 20.

Clause 11: Definitions etc.

Clause 11(1) mirrors HRA section 21(1), excluding references to terms not used in the Bill, and with a different title.

Clause 12: Short title, commencement, application and extent

This Clause basically mirrors HRA section 22 as amended, though does not stipulate the extent of the Bill at this stage.

Schedule 1: The rights

The rights have been drafted for now in a short illustrative form in order to convey their essence for the purposes of consultation and debate. More information on each of the rights is contained in the 'The Rights: background information' document.

Schedule 2: Supplementary provisions on interpretation, the right of the Crown to intervene, judicial acts and the power to take remedial action

Schedule 2 contains five provisions which closely mirror those in the HRA but which have been located here in order to make this draft of the Bill more easily readable. Contrary to standard practice, the provisions in this Schedule are referred to as clauses and sections rather than paragraphs.

Clause 1, Interpretation of the rights: this provision proposes to give courts the power (not the duty) to take into account international law, and the judgments of foreign courts.

It can be compared with the HRA section 2, which gives the courts the duty to take into account judgments of the European Court of Human Rights.

It can also be compared with the 2008 Outline Bill, clause 2, page 106-7, which would give the courts the duty to pay due regard to international law, and a power to consider judgments of foreign and international courts.

Clause 2, Interpretation of legislation and common law: this clause goes beyond the equivalent in HRA section 3 by extending to the common law, and follows the 2008 Outline Bill, clause 3, page 106.

Clause 3, Right of Crown to intervene: this clause is the same as HRA section 5 and allows the government to intervene in a case where a court is considering whether to make a declaration of incompatibility.

Clause 4, Judicial acts: this clause is derived from HRA section 9. It (1) stipulates how challenges to judicial acts (essentially, but not only, judgments) which may be incompatible with any of the rights must be brought, and (2) prohibits an award of damages if the judicial act was done in good faith.

Clause 5, Power to take remedial action: this clause follows section 10 of the HRA but the trigger for its application based on a finding of the European Court of Human Rights has been

omitted. It allows the government, if legislation has been declared incompatible, to remove the incompatibility by an order, even if it is primary legislation which has been declared incompatible. Schedule 3 would provide more detail on the procedure to be followed.

Schedule 3: Remedial orders

Schedule 3 would contain provisions similar to those in HRA Schedule 2 covering incidental matters and the procedure to be followed in Parliament where a provision of primary or subordinate legislation has been declared incompatible by a court under clause 4.

[Schedule 4: Derogations and Reservations]

It is unclear whether the Bill requires this Schedule. This note is intended to help inform consideration of the matter.

Rights in treaties can be limited or restricted in several ways. One way is to include in the treaty express provisions on limitations, either generically or on right-specific bases (see clause 8 above).

Another way is to permit States to derogate from (get out of) some or all of their obligations under the treaty at certain times. For example, Article 15 of the European Convention on Human Rights (ECHR) permits States to derogate from some obligations under it during war time "or other public emergency threatening the life of the nation". This provision was used by the UK in relation to detention in Northern Ireland: see, e.g., Schedule 3, Part I of the HRA, as enacted in 1988, but repealed in 2005.

ICESCR, however, contains no such provision. The European Social Charter does contain such a provision (Article 30), which mirrors Article 15 of the ECHR.

Yet another way is for States to make "reservations" when signing or ratifying a treaty. A "reservation" is defined in the Vienna Convention on the Law of Treaties as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State". Article 19 of that Convention permits reservations unless they are prohibited by the treaty, outside the treaty's permitted reservations, or "incompatible with the object and purpose of the treaty".

ECHR Article 57 permits a State when signing or ratifying to "make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision." When the UK signed the first Protocol to the Convention on 20 March 1952, its Permanent Representative to the Council of Europe made this reservation in relation to Article 2 on the right to education:

> "I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom

only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure."[14]

This reservation appears in Schedule 3, Part II, of the HRA.

The ICESCR contains no such provision on reservations, but many have been made. The UK has made several in relation to overseas territories, and the following in relation to the UK:

Upon signature:

"First, the Government of the United Kingdom declare their understanding that, by virtue of article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under article 1 of the Covenant and their obligations under the Charter (in particular, under articles 1, 2 and 73 thereof) their obligations under the Charter shall prevail.

Secondly, the Government of the United Kingdom declare that they must reserve the right to postpone the application of sub-paragraph (a) (i) of article 7 of the Covenant in so far as it concerns the provision of equal pay to men and women for equal work, since, while they fully accept this principle and are pledged to work towards its complete application at the earliest possible time, the problems of implementation are such that complete application cannot be guaranteed at present."

Upon ratification:

"Firstly, the Government of the United Kingdom maintain their declaration in respect of article 1 made at the time of signature of the Covenant……

The Government of the United Kingdom reserve the right to interpret article 6 as not precluding the imposition of restrictions, based on place of birth or residence qualifications, on the taking of employment in any particular region or territory for the purpose of safeguarding the employment opportunities of workers in that region or territory."

The UK's reservation when signing ICESCR, to the right of equal pay for men and women, is presumably no longer in force – though it is included on the UN Treaty Collection website, and no statement withdrawing that reservation is included there.

The European Social Charter contains no provision on reservations. The UK has made several declarations. The pick-and-mix character of the Charter requires a State upon ratification to notify the Secretary General of the Council of Europe which provisions of the Charter the State is willing to be bound by (Article 20). Following the UK's initial declaration in 1962 accepting 63 of the Charter's 72 paragraphs, it subsequently withdrew its acceptance of three of them (in 1987 and 1989), and has added none.[15]

PR, 12/4/19

[14] "**Article 2 – Right to education** No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

[15] In 1987, it denounced its acceptance of its obligation to regulate the employment of women workers on night work in industrial employment (Article 8.4(a)). In 1989 it rejected its obligations to prohibit those under 18 years of age being employed in night work except for certain occupations provided for by national laws or regulations (Article 7.8) and to prohibit women being employed in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.