

Towards an Economic, Social and Cultural Rights Bill

The Rights: background information

This document provides background information on the main bases for the UK's international legal obligations in relation to each of the rights which are listed for illustrative purposes in Schedule 1 of the consultation draft of the [Economic, Social and Cultural Rights Bill](#), April 2019, and on the following page.

It also covers some of (i) the authoritative statements on the scope and meaning of the rights, by the most relevant UN monitoring body, the Committee on Economic, Social and Cultural Rights, as well as (ii) some of its findings and recommendations relating to the UK's compliance with those obligations that are within its remit. In addition, some of the (iii) reports and conclusions relating to the UK by the European Social Charter's monitoring body, the European Committee of Social Rights, and (iv) recommendations of the Equality and Human Rights Commission's updated report in March 2018 on implementation of the International Covenant on Economic, Social and Cultural Rights, are noted, as well as (v) some recent developments.

The Rights

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.

1. Everyone has the right to work

This right would be based on the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)), Article 6, in line with the Universal Declaration of Human Rights ([UDHR](#)), Article 23.1.¹

It includes the right to the opportunity to gain a living by work freely chosen or accepted as well as a duty on States to take appropriate steps to safeguard the right. Article 6.2 provides that the State's duty to take steps to achieve full realization of the right includes technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment.

The Committee on Economic, Social and Cultural Rights (CESCR) adopted [General Comment 18](#) on Article 6 in 2005.² It explains that the “right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity”. The right includes “the right not to be deprived of work unfairly”, and it is both “an individual right that belongs to each person and is at the same time a collective right”. The work must be decent work which respects the fundamental rights of the worker, and Article 6 must be read together with Articles 7 and 8 (see below).

In its [2016 report](#) on the UK, the CESCR recommended the UK should “review its employment policies to address the root causes of unemployment and include in its action plan time-bound goals with a specific focus on groups disproportionately affected by unemployment, such as young people, persons with disabilities and persons belonging to ethnic, religious or other minorities” (para. 30).

ICESCR, Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

The right to work is also contained in the [European Social Charter \(ESC\)](#), Article 1, involving obligations under four paragraphs all of which have been [accepted by the UK](#). According to the Charter's monitoring body, the European Committee of Social Rights (ECSR), in 2016, the UK was not in violation of those obligations, deferred one finding and requested further information (see below and the [Tables here](#)).

¹ “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”, UDHR, Article 23.1.

² General Comments are published by the UN human rights treaty bodies and include a [comprehensive interpretation](#) of the relevant treaty's substantive provisions. They are widely regarded as one of the most authoritative sources in international law on the meaning of those provisions.

ESC, Article 1 –The right to work

With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

- 1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;³
- 2 to protect effectively the right of the worker to earn his living in an occupation freely entered upon;⁴
- 3 to establish or maintain free employment services for all workers;⁵
- 4 to provide or promote appropriate vocational guidance, training and rehabilitation.⁶

In March 2018, in its [update report on Great Britain's implementation](#) of the ICESCR, the Equality and Human Rights Commission stated “[r]ights at work are not adequately protected for everyone in Great Britain” (page 10) – see further below under the ‘right to the enjoyment of just and favourable conditions of work’, Right No. 3.

³ The European Committee of Social Rights (ECSR) [concluded in 2016](#) that “the situation in United Kingdom is in conformity” with this paragraph for 2011-2014 (policy of full employment).

⁴ The ECSR [concluded in 2016](#) that “[p]ending receipt of the information requested...the situation in the United Kingdom is in conformity” with this paragraph for 2011-2014 (freely undertaken work (non-discrimination, prohibition of forced labour, other aspects).

⁵ The ECSR [concluded in 2016](#) that “[p]ending receipt of the information requested...the situation in United Kingdom is in conformity” with this paragraph for 2011-2014 (free placement services).

⁶ The ECSR [deferred its decision in 2016](#) in relation to this paragraph for 2011-2014 “[p]ending receipt of the information requested” (vocational guidance, training and rehabilitation).

2. Everyone has the right to vocational guidance and training

This right would be based on the European Social Charter, Articles 9 and 10, involving obligations under five paragraphs all of which have been accepted by the UK. According to the Charter's monitoring body in 2016, the UK was not in violation of those obligations (see below and the [Tables here](#)).

ESC, Article 9 –The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Contracting Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including school children, and to adults.⁷

ESC, Article 10 –The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake:

- 1 to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;⁸
- 2 to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;⁹
- 3 to provide or promote, as necessary:
 - a adequate and readily available training facilities for adult workers;
 - b special facilities for the re training of adult workers needed as a result of technological development or new trends in employment;¹⁰
- 4 to encourage the full utilisation of the facilities provided by appropriate measures such as:
 - a reducing or abolishing any fees or charges;
 - b granting financial assistance in appropriate cases;
 - c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
 - d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.”¹¹

⁷ The ECSR [concluded in 2016](#) that “[p]ending receipt of the requested information...the situation in the United Kingdom is in conformity with Article 9” for 2011-2014.

⁸ The ECSR [concluded in 2016](#) that “[p]ending receipt of the information requested...the situation in the United Kingdom is in conformity with” this paragraph for 2011-2014 (promotion of technical and vocational training; access to higher technical and university education).

⁹ The ECSR [concluded in 2016](#) that “[p]ending receipt of the information requested...the situation in United Kingdom is in conformity with” this paragraph for 2011-2014.

¹⁰ The ECSR [deferred its decision in 2016](#) in relation to this paragraph for 2011-2014 “[p]ending receipt of the information requested” (vocational training and retraining of adult workers).

¹¹ The ECSR [deferred its decision in 2016](#) in relation to this paragraph for 2011-2014 “[p]ending receipt of the information requested” (encouragement for the full utilisation of available facilities).

3. Everyone has the right to the enjoyment of just and favourable conditions of work

This right would be based on ICESCR Article 7, and is in line with UDHR, Articles 23 and 24.¹²

The right includes in particular ensuring all workers receive remuneration which provides as a minimum (a) fair wages and equal pay for equal work without distinction, particularly equal work conditions for men and women, and (b) decent standard of living. It also includes safe and healthy working conditions, equal promotion opportunities and rest, leisure and reasonable limits to working hours and paid holidays.

The CESCR adopted [General Comment 23](#) on this right in 2016. It explains that the right “is a prerequisite for, and result of, the enjoyment of other Covenant rights, for example, the right to the highest attainable standard of physical and mental health, by avoiding occupational accidents and disease, and an adequate standard of living through decent remuneration”; and that the trade union rights, freedom of association and the right to strike (in Article 8, see below) “are crucial means of introducing, maintaining and defending just and favourable conditions of work”.

The right is for “all workers in all settings, regardless of gender, as well as young and older workers, workers with disabilities, workers in the informal sector, migrant workers, workers from ethnic and other minorities, domestic workers, self-employed workers, agricultural workers, refugee workers and unpaid workers”.

The fundamental elements in Article 7 to guarantee just and favourable conditions of work are not exhaustive; other relevant elements underlined by the Committee include prohibition of forced labour and social and economic exploitation of children and young persons; freedom from violence and harassment, including sexual harassment; and paid maternity, paternity and parental leave.

The UK is “required to set minimum standards that must be respected and cannot be denied or reduced on the basis of economic or productivity arguments” in relation to rest and leisure, limits on working hours and paid periodic holidays.

In its [2016 report](#) on the UK, the Committee reiterated expressions of concern and recommendations about several aspects of this right that it had made in its [2009 report](#).

It recommended that the UK should:

“(a) Take all appropriate measures to progressively reduce the use of temporary employment, precarious self-employment and “zero hour contracts”, including by

¹² “(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”, UDHR, Article 23.1-3. “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”, UDHR, Article 24.

generating decent work opportunities that offer job security and adequate protection of labour rights;

(b) Ensure that the labour and social security rights of persons in part-time work, precarious self-employment, temporary employment and “zero-hour contracts” are fully guaranteed in law and in practice.” (para. 32).

The “persistent discrimination against migrant workers in the labour market” also concerned the Committee, particularly their “high and increasing concentration...in low-paid work” and their “greater risk of being victims of abusive working conditions” (para. 34); and issued four recommendations to the UK government (para. 35).

It also recommended that the national minimum wage should be set at a level sufficient to provide all workers and their families with a decent standard of living, and be extended to those under 25 (para. 37).¹³

ICESCR, Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;¹⁴
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

This right is included in the European Social Charter, Articles 2, 3 and 4 involving obligations under 13 paragraphs of which 11 have been accepted by the UK; the UK has not accepted obligations on reasonable working hours (Article 2.1) and on equal pay for men and women (Article 4.3). According to the Charter’s monitoring body in 2019, the UK was not complying with obligations under eight of the 11 accepted paragraphs (see below and the [Tables here](#)). Only Azerbaijan and Georgia [have proportionately more labour rights’ violations](#) under the Charter.

Several obligations accepted by the UK are more specific than those in ICESCR Article 7 - such as a guaranteed minimum paid holidays, required consultation on health and safety measures and only permitting legally-authorized wage deductions – made possible by the

¹³ The “[national living wage](#)” applies to those 25 years of age and over (£7.83 an hour, increasing to £8.21 from April 2019); the “national minimum wage” applies to those under 25, with different rates for 21-24 (£7.38 > £7.70), 18-20 (£5.90 > £6.15), under 18 year olds (£4.20 > £4.35) and apprentices (£3.70 > £3.90).

closer alignment of social values and socio-economic conditions amongst the European states which negotiated the Charter.¹⁵

ESC, Article 2 –The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;¹⁶

2 to provide for public holidays with pay;¹⁷

3 to provide for a minimum of two weeks annual holiday with pay;¹⁸

4 to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;¹⁹

5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.²⁰

ESC, Article 3 –The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1 to issue safety and health regulations;²¹

2 to provide for the enforcement of such regulations by measures of supervision;²²

3 to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health.²³

ESC, Article 4 –The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1 to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;²⁴

¹⁵ O'Cinneide, C. *The European Social Charter and the UK: Why it Matters*. King's Law Journal 2018, 29:2, 275-296, at 285-6, doi: 10.1080/09615768.2018.1502064

¹⁶ This obligation has not been accepted by the UK, [nor by](#) Austria, Azerbaijan, Bulgaria, Denmark and Sweden.

¹⁷ As it had done in 2014, the ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 2§2 of the 1961 Charter on the ground that the right of all workers to public holidays with pay is not guaranteed” for 2013-2016.

¹⁸ As it had done in 2014, the ECSR [concluded in 2019](#) that “the situation in the United Kingdom is in conformity with Article 2§3 of the 1961 Charter” for 2013-2016.

¹⁹ As it had done in 2014, the ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures” for 2013-2016.

²⁰ As it had done in 2014, the ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 2§5 of the 1961 Charter, on the ground that there are inadequate safeguards to prevent workers from working for more than twelve consecutive days without a rest period” for 2013-2016.

²¹ The ECSR [concluded in 2017](#) that “the situation in the United Kingdom is not in conformity with [this paragraph] on the ground that all self-employed and domestic workers are not covered by the occupational health and safety regulations” for 2012-2015.

²² The ECSR [concluded in 2017](#) that “[p]ending receipt of the requested information...the situation in United Kingdom is in conformity with” this paragraph for 2012-2015.

²³ The ECSR [concluded in 2017](#) that “the situation in United Kingdom is in conformity with” this paragraph for 2012-2015.

²⁴ The ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 4§1 of the 1961 Charter on the ground that the minimum wage does not ensure a decent standard of living” for 2013-2016, despite improvements since its 2014 conclusions. The Committee in 2019 also repeated its request for information on “the net values of both minimum and average wages and, where applicable, direct taxation, social security contributions, the costs of living and earnings-related benefits. The Committee recalls that, under Article 4§1 of the 1961 Charter, the minimum or lowest net remuneration or wage paid in the labour

2 to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;²⁵
3 to recognise the right of men and women workers to equal pay for work of equal value²⁶;
4 to recognise the right of all workers to a reasonable period of notice for termination of employment;²⁷
5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.²⁸

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage fixing machinery, or by other means appropriate to national conditions.

In March 2018, in its [update report on Great Britain's implementation](#) of the ICESCR, the Equality and Human Rights Commission noted positively the introduction of gender pay gap reporting requirements for employers in April 2017, and stated that “the new National Living Wage for those aged 25 and over has led to the largest fall in low pay in four decades”.

It also acknowledged record high employment rates; recent reductions in involuntary part-time work, underemployment and temporary employment rates; and increasing efforts to address the disability employment gap.

It was at the same time concerned about how low pay, underemployment, job insecurity and housing and childcare costs “present significant challenges to those seeking to escape poverty”; the association of increased flexibility with insecurity, lower pay and loss of some employment protections, e.g. for agency workers who tend to be younger, less qualified and with ethnic minority backgrounds. And noted that those most likely to have low-paid, part-time work with few progression opportunities are women, disabled people and people from some ethnic minorities. Lack of reasonable adjustments, difficulties in accessing transport and the workplace, and negative attitudes towards disabled people are factors in the persisting disability employment gap.

It made a suite of recommendations to the UK government.

market must not fall below 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living”.

²⁵ As it had done in 2010 and in 2014, the ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 4§2 of the Charter on the ground that workers have no adequate legal guarantees to ensure them increased remuneration for overtime” for 2013-2016.

²⁶ This obligation is also not accepted by Croatia, Cyprus and Hungary.

²⁷ As it had done in 2014, the ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 4§4 of the 1961 Charter on the ground that notice periods are not reasonable for employees with less than three years of service” for 2013-2016.

²⁸ As it had done in 2014, the ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 4§5 of the 1961 Charter on the ground that the absence of adequate limits on deductions from wages equivalent to the National Minimum Wage may result in depriving workers who are paid the lowest wage and their dependents of their means of subsistence” for 2013-2016.

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

These rights would be based on ICESCR, Article 8. The right to join and form trade unions is in line with UDHR, Article 23.4.²⁹ The CESCR has not issued a General Comment on Article 8.

In its [1997 report](#) on the UK, the CESCR stated that “failure to incorporate the right to strike into domestic law constitutes a breach of article 8” (para. 11). This is the only occasion in its six reports over 36 years (1980-2016) in relation to any provision of the Covenant that the Committee has made such a statement.

It recommended that “the right to strike be established in legislation” (para. 23), and reiterated this in its [2002 report](#) (paras. 16 and 34).

In its 2016 report, following the Trade Union Act 2016’s introduction of procedural requirements limiting the right to take industrial action, the Committee recommended the UK to review the Act and to “take all necessary measures to ensure that, in line with its obligations under article 8 of the Covenant, all workers enjoy their trade union rights without undue restrictions or interference”. It also urged the UK to “take all necessary measures to ensure the effective implementation of the Employment Relations Act 1999” and secondary legislation to prohibit blacklisting of trade union members, and guarantee access to effective legal remedies and compensation for those blacklisted.

ICESCR, Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

²⁹ “Everyone has the right to form and to join trade unions for the protection of his interests”, UDHR, Article 23.4.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

These rights are included in the European Social Charter, Articles 5 and 6, involving obligations under five paragraphs all of which have been accepted by the UK. According to the Charter's monitoring body in 2019, the UK was not complying with obligations under three of those paragraphs (see below and the [Tables here](#)).

ESC, Article 5 –The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.³⁰

ESC, Article 6 –The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:

1 to promote joint consultation between workers and employers;³¹

2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;³²

3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;³³

and recognise:

4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.³⁴

³⁰ The ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 5 of the 1961 Charter on the ground that legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represent an unjustified incursion into the autonomy of trade unions” for 2013-2016.

³¹ As in 2014, the ECSR [concluded in 2019](#) that “the United Kingdom is in conformity with Article 6§1 of the 1961 Charter” for 2-13-2016.

³² As in 2014, the ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 6§2 of the 1961 Charter on the ground that workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining.

³³ As in 2014, the ECSR [concluded in 2019](#) that “the United Kingdom is in conformity with Article 6§3 of the 1961 Charter”.

³⁴ The ECSR [concluded in 2019](#) that “the situation in the United Kingdom is not in conformity with Article 6§4 of the Charter on the following grounds: the scope for workers to defend their interests through lawful collective action is excessively circumscribed; lawful collective action is limited to disputes between workers and their employer, thus preventing a union from taking action against a de facto employer if this was not the immediate employer; the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive; [and] the protection of workers against dismissal when taking industrial action is insufficient” as in 2013-2016, reiterating several previous conclusions.

There is no common law right to strike. Those who strike are regarded legally as breaking their contracts, and strike organisers are regarded legally as inducing breach of contract. In 1906, Parliament gave a limited immunity from liability for these ‘torts’ for those acting in contemplation or furtherance of a trade dispute, now in [section 219](#) of the Trade Union and Labour Relations (Consolidation) Act 1992. This was described as a freedom rather than a right by Lord Justice Elias in [RMT v Serco](#) (2011); prominent labour lawyers, John Hendy and Keith Ewing, have described it as [a licence](#).

The European Convention on Human Rights ([Article 11](#)) (and thus the [Human Rights Act](#) 1998) include the right to form and join trade unions. In 2008, the European Court of Human Rights in Strasbourg departed from its previous jurisprudence [in finding that](#) this right includes the right to bargain collectively (*Demir and Baycara*). In April 2009, [the court held](#) that the right also included the right to strike. The Court of Appeal [in 2009 rejected](#) the argument that statutory obligations on unions to provide information and notice to employers before taking industrial action infringed the right to strike under Article 11 (*Metrobus*).³⁵ In [RMT v Serco](#) (2011) the unions accepted that the Court of Appeal could not overrule *Metrobus*, but Elias LJ adopted much less anti-union reasoning, and the unions’ appeals on the facts were allowed (basically permitting them more leeway in getting the advance information and notices correct). The Strasbourg court in [RMT v UK](#) (2014) rejected arguments that strike-ballot notice requirements, and secondary strikes, violated Article 11; the court in closing stressed that it was not competent “to assess...compliance with the relevant standards of the ILO or the European Social Charter, the latter containing a more specific and exacting norm regarding industrial action” (para 106).

Hendy and Ewing [have written that](#) all six UK trade union cases decided in Strasbourg since *Demir and Baycara* have been unsuccessful. The case arguing that abolition of the Agricultural Wages Board violated Article 11 was one of these, [Unite v UK](#).

Freedom of association is one of the “[fundamental principles](#)” on which the International Labour Organisation is based. ILO Conventions No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on the Right to Organise and Collective Bargaining³⁶ also cover these rights.³⁷ The right to form and join trade unions is also included in the International Covenant on Civil and Political Rights ([Article 22.1](#)).

³⁵ For academic criticism, see Dukes, R. *The Right to Strike under UK Law: Not Much More than a Slogan?: Metrobus v Unite The Union* [2009] EWCA Civ 829, Industrial Law Journal, Volume 39, Issue 1, 1 March 2010, Pages 82–91, <https://doi.org/10.1093/indlaw/dwp029>. See also [Dukes 2011](#), and [Bogg and Dukes 2017](#).

³⁶ These Conventions were ratified by the UK on 27 June 1949 and 30 June 1950, [respectively](#).

³⁷ For accounts of the relationship between the ILO and the ICESCR, see Saul B, Kinley D, Mowbray J. *The International Covenant on Economic, Social and Cultural Rights*. Oxford: OUP; 2016, pages 487–491; Rodgers G, Lee E, Swepston, Van Daele, J. *The ILO and the Quest for Social Justice, 1919–2009*. Geneva: ILO, 2009, pages 38 *et seq*. According to the latter, “Articles 6 to 10 of [ICESCR], adopted in 1966, are a brief restatement of ILO standards adopted up until that time.” According to the former, “[o]n many occasions, the [ICESCR] has implicitly invoked concepts from ILO treaties or interpretive practice, without expressly referencing the ILO sources.”

8. Everyone has the right to social security, including social insurance

This right would be based on ICESCR, Article 9, in line with the UDHR, Article 25.1 where it was included within the wider right to an adequate standard of living (covered by ICESCR, Article 11 and below), and with UDHR, Article 22.³⁸

The CESCR stated in [General Comment 19](#) that this right is “of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights”.

The right encompasses adequate contributory and non-contributory benefits under a social security system covering nine risks or contingencies: (a) health care, (b) sickness, (c) old age, (d) unemployment, (e) employment injury, (f) family and child support, (g) maternity, (h) disability and (i) survivors and orphans.

In its 2016 report, the Committee called on the UK to reverse the benefit cuts introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016; to review entitlement conditions and sanctions, ensuring that sanctions are used proportionately with prompt and independent dispute resolution (para. 41).

It also recommended that the link between benefits and living costs should be restored to a level sufficient for an adequate standard of living, including access to health care, adequate housing and food.

ICESCR, Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

This right is also included in the European Social Charter, Article 12, involving obligations under four paragraphs of which one has been accepted by the UK (Article 12.1); the UK has not accepted obligations about maintaining a minimum level (Article 12.2), raising the system progressively higher (Article 12.3), and treating non-nationals equally (Article 12.4). According to the Charter’s monitoring body in 2017, the UK was not complying with its obligations under the one accepted paragraph (see below and the [Tables here](#)).

ESC, Article 12 –The right to social security

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

1 to establish or maintain a system of social security;³⁹

³⁸ “Everyone, as a member of society, has the right to social security...”, Universal Declaration of Human Rights, Article 22.

³⁹ The Committee of Social Rights [concluded in 2017](#) that “the situation in the United Kingdom is not in conformity with Article 12§1 of the 1961 Charter on the grounds that: the level of the Statutory Sick Pay (SSP) is inadequate; the minimum levels of the Employment Support Allowance (ESA) are inadequate; the level of long-term incapacity benefits is inadequate; the level of unemployment benefits is inadequate.” for 2012-2015.

2 to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) Concerning Minimum Standards of Social Security;⁴⁰
3 to endeavour to raise progressively the system of social security to a higher level;
4 to take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
a equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;
b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties.

This right also falls to a limited extent within the European Convention on Human Rights, [Protocol 1](#), Article 1 (and thus the [Human Rights Act 1998](#)), in that the right to peaceful enjoyment of possessions includes social security benefits. But this sets no minimum standards for benefits provided by the state.⁴¹

In March 2018, in its [update report on Great Britain's implementation](#) of the ICESCR, the Equality and Human Rights Commission stated that “[t]he reforms of the social security system since 2010 may present the most significant threat to the implementation of socio-economic rights in Great Britain” (page 9). [Research carried out for it](#) found that “overall, changes to taxes, benefits, tax credits and Universal Credit (UC) announced since 2010 are regressive, however measured – that is, the largest impacts are felt by those with lower incomes”.

The Commission called on the UK Government, for example, to undertake cumulative impact assessments of tax and social security policies, to monitor the effect of the four-year freeze on social security entitlements on the rights to an adequate standard of living and social security, and to reintroduce income poverty-related targets for the eradication of child poverty with clear accountability mechanisms and binding, timed and measurable targets as part of a comprehensive child poverty strategy.

The Commission also 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 the Legal Aid, Sentencing and Punishment of Offenders Act 2012.⁴²

The Child Poverty Action Group has brought many welfare rights [test cases](#).

⁴⁰ The UK ratified the [ILO Convention No. 102](#) on 27 April 1945, accepting Parts II to V, VII and X. accepting Parts 2 (medical care), 3 (sickness benefit), 4 (unemployment benefit), 5 (old-age benefit), 7 (family benefit) and 10 (survivors' benefit). In its [2009 report](#), the Committee on Economic, Social and Cultural Rights recommended that the UK “commit itself fully to all the provisions” of the Convention and to “consider withdrawing its reservations to Parts 6, 8 and 9” (paragraph 43), covering respectively employment injury benefit, maternity benefit and invalidity benefit.

⁴¹ Simpson, M. *Assessing the Compliance of the United Kingdom's Social Security System with its Obligations under the European Social Charter*. Human Rights Law Review, 2018, 18, 745–769, at 747.

⁴² Legal aid may be given for a matter under LASPO if it is expressly listed in Schedule 1 of the Act. This reversed the previous position, where legal aid was possible unless a matter was expressly excluded. In September 2018 the Commission [published research on the impact of LASPO](#). In February 2019, the government published its ‘Post-Implementation [Review of Part 1 of LASPO](#)’, which “does not make specific recommendations”.

9. Everyone without adequate resources has the right to social and medical assistance.

This right would be based on the European Social Charter, Article 13, which has been accepted by the UK. It goes beyond the right to social security, which is linked to specific risks or contingencies, and beyond charity, by legally requiring benefits in cash or kind for which individual need is the main eligibility criterion.⁴³

In 2017, the European Committee of Social Rights regarded the level of assistance for single persons as adequate,⁴⁴ but it [deferred making a decision](#) on the UK's compliance with Article 13.1 because it considered "that the absence of the information requested amounts to a breach of the reporting obligation entered into by the United Kingdom under the Charter".⁴⁵ Specifically, the Committee:

- requested further information and "comprehensive comments" from the UK government on crisis loans and maladministration and sanctioning in the benefit system without which "there will be nothing to establish that there is an effective right to social assistance for all persons in need";
- reserved its position pending receipt of information on hardship payments for EEA nationals denied housing benefit, on the rules applicable to non-EEA nationals and on the number of lawful resident foreign nationals who fail to meet the habitual residence test and who are denied benefits because of the restrictions imposed;
- requested confirmation that the UK's legislation and practice comply with the requirements for emergency social assistance for those unlawfully in the country, namely that they have a legally recognised right, which is effective in practice, to the satisfaction of their basic human material need (food, clothing, shelter) in emergencies to cope with urgent and serious need (also engaged by Article 13.4); and
- asked to be kept informed of the Department of Work and Pensions addressing improvements [recommended by the Social Security Advisory Committee](#) to reforms aimed at resolving benefit disputes earlier and reducing demand on the tribunals service ("Mandatory Reconsideration").⁴⁶

In relation to [Article 13.3](#), the Committee asked for the UK government's response to observations⁴⁷ that Citizens' Advice services were struggling to maintain service levels following funding cuts at a time of highest demand due to the extent and breadth of welfare reform; and "to indicate what measures were taken to mitigate the impact of reduced funding

⁴³ European Committee of Social Rights. [Digest of the Case Law](#) of the European Committee of Social Rights (2018) at

⁴⁴ This is based on the poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty value.

⁴⁵ European Committee of Social Rights. Conclusions XXI-2 (2017): UNITED KINGDOM. January 2018, Available here: <http://hudoc.esc.coe.int/eng?i=XXI-2/def/GBR/3/1/EN> (and click on 'Related').

⁴⁶ The Department of Work and Pensions' detailed response to the recommendations was [published here](#) on 30 March 2017.

⁴⁷ The observations were made by Just Fair in their Submission to the Committee on Economic, Social and Cultural Rights of October 2015. Evidence in this submission was also referred to by the Committee in requesting further information on crisis loans and maladministration and sanctioning under Article 13.1.

for advice services [and] for updated information as regards operation of social services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so”.

The Committee’s finding of conformity with Article 13.4 was made pending information on the situation of lawfully present foreign nationals in light of changes to NHS charging regulations for overseas visitors and introduction of the immigration health surcharge. Under the Charter, parties must provide non-resident foreigners, without resources, with emergency social and medical assistance, including a right of appeal to an independent body as regards provision of emergency shelter.⁴⁸

Article 13 –The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;⁴⁹
- 2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;⁵⁰
- 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;⁵¹
- 4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.⁵²

This right was also proposed in 2008 by MPs and peers.⁵³

⁴⁸ Conference of European Churches (CEC) v. the Netherlands, Complaint No 90/2013, decision on the merits of 1 July 2014 §106.

⁴⁹ The ECSR [deferred its decision](#) in 2017 in relation to this paragraph for 2012-2015 “[p]ending receipt of the information requested” (adequate assistance for every person in need).

⁵⁰ The ECSR [concluded in 2017](#) that “the situation in United Kingdom is in conformity with” this paragraph for 2012-2015 (non-discrimination in the exercise of social and political rights).

⁵¹ The ECSR [concluded in 2017](#) that “[p]ending receipt of the information requested...the situation in United Kingdom is in conformity with” this paragraph for 2012-2015 (prevention, abolition or alleviation of need).

⁵² The ECSR [concluded in 2017](#) that “[p]ending receipt of the information requested...the situation in United Kingdom is in conformity with” this paragraph for 2012-2015 (specific emergency assistance for non-residents).

⁵³ “Everyone has the right to social assistance, including care and support, in accordance with their needs.”, and “No one may be refused appropriate emergency medical treatment”, House of Lords & House of Commons [Joint Committee on Human Rights](#). A Bill of Rights for the UK? Twenty-ninth Report of Session 2007–08. 21 July 2008. Report, together with formal minutes, page 112.

10. Everyone has the right to benefit from social welfare services

This right would be based on the ESC, Article 14, accepted by the UK, supplementing the rights to social security and to social and medical assistance.

It legally requires a network of social services, including in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). It also requires states to provide support for voluntary associations seeking to establish social welfare services.

In 2017 (see footnotes below), whilst concluding that the UK was in conformity with this Article, the European Committee of Social Rights [requested information](#) on the impact on the users of social welfare services of the:

- Care Act 2014, which sets out the legislative framework for the adult social care system;
- the establishment in Scotland in 2011 of the Care Inspectorate, which inspects, regulates and supports the improvement of social care and social work services, and of Healthcare Improvement Scotland, which regulates private health services and has authority on the development of evidence-based advice, guidance and standards;
- implementation in Northern Ireland of "Transforming Your Care", including Integrated Care Partnerships and Self Directed Support;
- implementation in Wales of the Social Services and Well-being (Wales) Act 2014.

It also [requested further information](#) on the implementation of an effective supervisory system of social services, including the private sector.

Article 14 –The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Contracting Parties undertake:

1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;⁵⁴

2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.⁵⁵

⁵⁴ The ECSR [concluded in 2017](#) that "[p]ending receipt of the information requested...the situation in the United Kingdom is in conformity with" this paragraph for 2012-2015.

⁵⁵ The ECSR [concluded in 2017](#) that "[p]ending receipt of the information requested...the situation in the United Kingdom is in conformity with" this paragraph for 2012-2015.

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.

This right would be based on ICESCR, Article 11, in line with the wider UDHR, Article 25.1.⁵⁶ It is wide-ranging and composite right that is closely connected to other rights, such as the rights to social security and health.

The right to water would be expressly included as the Committee on Economic, Social and Cultural Rights has stated in [General Comment 15](#) in 2003 that the “right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival” and is “inextricably related” to the rights to health, housing and food.

The right to sanitation would also be expressly included in line with the UN General Assembly [declaring in 2010](#) “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”. The human right to sanitation is [recognised by the UK](#).

The right to adequate housing

The Committee addressed this right in [General Comment 4](#) in 1991 and [General Comment 7](#) (forced evictions) in 1997.

According to General Comment 4, the right means the right to live in security, peace and dignity and the guarantee of physical safety, and cannot be equated with simply having a roof over one’s head, or exclusively as a commodity (paras. 7 and 8(d)). Its link to the inherent dignity of the human being means, for example, that the right “should be ensured to all persons irrespective of income or access to economic resources” (para. 7). Adequacy covers in a particular legal security of tenure, availability, affordability, habitability, accessibility, location (e.g. in relation to employment options, health-care services, schools and childcare centres), and cultural adequacy (para. 8).

In the development of housing policy, the Committee has highlighted the need for “extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives”, and cross-governmental coordination “in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11” (para. 12).

In its 2016 report on the UK (paras. 49-50), the Committee expressed concern about “the persistent critical situation in terms of the availability, affordability and accessibility of adequate housing in the [UK], in part as a result of cuts in State benefits” and urged the UK

⁵⁶ “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”, UDHR, Article 25.1.

to “[a]dopt all necessary measures to address the housing deficit by ensuring a sufficient supply of housing, in particular social housing units, especially for the most disadvantaged and marginalized individuals and groups, including middle- and low income individuals and households, young people and persons with disabilities”. This was in effect a repetition of the Committee’s recommendation in its [2009 report](#) in light of what it already regarded then as a “chronic shortage of housing” (para. 29).

It also in 2016 urged the UK to regulate the private rental sector; to take corrective measures to address bad, substandard and uninhabitable housing; to take steps to avoid discrimination in the provision of accommodation for Roma, Gypsy and Traveller communities and generally; and to intensify efforts to overcome persistent inequalities in housing for Catholic families in North Belfast “including through meaningful participation by all actors in decision-making processes related to housing” (para. 50).

In March 2018, in its [update report on Great Britain’s implementation](#) of the ICESCR, the Equality and Human Rights Commission highlighted, for example, the effects of lowering the cap on housing benefits and universal credit, alongside the four-year freeze on entitlements.

The Child Poverty Action Group has brought many welfare rights [test cases](#) that affect housing.

The right to housing is included in the 1996 Revised European Social Charter which the UK has signed but not ratified.⁵⁷ It is not included in the 1961 European Social Charter.

The right to adequate food

The Committee addressed this right in [General Comment 12](#) in 1999. It affirmed that:

“the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.”(para. 4).

As the right to is only realized when everybody alone or in community has physical and economic access at all times to adequate food or means for its procurement, it must not be equated with a minimum of calories, proteins and other nutrients (para. 6).

The right implies availability, accessibility, sustainability, dietary needs, freedom from adverse substances, and cultural or consumer acceptability (paras. 7-13).

⁵⁷ “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1 to promote access to housing of an adequate standard;
2 to prevent and reduce homelessness with a view to its gradual elimination;
3 to make the price of housing accessible to those without adequate resources.” ([Revised ESC](#), Article 31)

The right requires adoption of a national strategy “to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks. It should also identify the resources available to meet the objectives and the most cost effective way of using them.” (para. 21). Detailed requirements for the development, scope and implementation of the strategy are set out (paras. 22-28).

The Committee recommends that governments should consider “adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food (para. 29). Monitoring mechanisms are required and effective remedies should be provided for individuals and groups, with adequate reparation, such as restitution, compensation, satisfaction or guarantees of non- repetition. (paras. 31-32).

In its 2016 report, in light of the “lack of adequate measures adopted by the [UK] to address the increasing levels of food insecurity, malnutrition, including obesity, and the lack of adequate measures to reduce the reliance on food banks”, the Committee recommended (the legally-required) “comprehensive national strategy for the protection and promotion of the right to adequate food in order to address food insecurity in all jurisdictions of the [UK] and to promote healthier diets”.

For its recommendations relating to breastfeeding and a sugar tax, see below under Right No. 12, the right to health.

In March 2018, in its [update report on Great Britain’s implementation](#) of the ICESCR, the Equality and Human Rights Commission noted evidence on food bank use (page 28) and on concerns about food poverty in Wales (page 35).

In January 2019, the House of Commons Environmental Audit Committee (EAC) expressed concern about the government [turning a blind eye](#) to UK hunger and food insecurity, which it continued to see as overseas issues, and concluded that targets for [Sustainable Development Goal 2](#) would not be reached without significant and coordinated action. To remedy the lack of clear ministerial accountability, it recommended the appointment of a minister with responsibility and accountability for combatting hunger and food insecurity within the UK (para.56). The government’s response is awaited.

The EAC also expressed concern about the lack of measurement of hunger, food insecurity and malnutrition in the UK – an essential aspect of implementing the right to food - highlighted by the [Food Insecurity Bill](#) introduced by Emma Lewell-Buck MP in November 2017. It has [since been reported](#) that questions about food buying and eating habits will be included in the annual Family Resources Survey conducted by the Department for Work and Pensions.

The Scottish government has recently [completed its consultation](#) on its proposals for framework legislation on its ‘Good Food Nation ambition’⁵⁸ to “focus on embedding processes for ensuring that the substance of the right to food has effect as a matter of

⁵⁸ Scottish government. Good Food Nation: consultation. 21 Dec 2018. Available from: <https://www.gov.scot/publications/good-food-nation-proposals-legislation/pages/1/> [Accessed xx]

everyday good practice”, whilst leaving a directly enforceable right to food “to the wider work on incorporation currently being done by the [First Minister's Advisory Group](#) on Human Rights Leadership”.

ICESCR, Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

12. Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

This right would be based on ICESCR, Article 12, which follows its recognition in 1946 in the preamble of the [constitution](#) of the World Health Organization and is in line with the UDHR, Article 25.⁵⁹

The Committee on Economic, Social and Cultural Rights in its [General Comment 14](#) in 2002 on the right regarded health as “a fundamental human right indispensable for the exercise of other human rights”, closely related and dependent on the realisation of other human rights. It includes the underlying determinants of health, such as food, nutrition, housing, water and sanitation, decent work and a healthy environment (para. 4). It applies to services and systems: see this helpful [information and 14-minute video](#) produced by the NHS in Scotland.

Its essential 4 elements are the (1) availability of facilities, goods, services and programmes, including the underlying determinants and essential medicines; (2) accessibility of facilities, goods and services without discrimination, physically and economically, and information; (3) their acceptability in terms of ethical, cultural, scientific, medical appropriateness with a design to respect confidentiality to improve health status; and (4) of good quality, including skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

The Committee published [General Comment 22](#) in 2016 on the right to sexual and reproductive health under Article 12, in view of “continuing grave violations” of this right (para. 4), noting generally that “[d]ue to numerous legal, procedural, practical and social barriers, access to the full range of sexual and reproductive health facilities, services, goods and information is seriously restricted” (para. 2).

In its [General Comment 24](#) in 2017 on State obligations under the ICESCR in the context of business activities, the Committee highlighted the challenges for countries in complying with their ICESCR obligations in view of the increased role and impact of private actors in the health (and education) sector, stating that “private health-care providers should be prohibited from denying access to affordable and adequate services, treatments or information” in view of the ‘obligation to protect’ (see Clause 2 of the Bill) (para. 21). It also stated that the ‘obligation to fulfil’ means that parties “should ensure that intellectual property rights do not lead to denial or restriction of everyone’s access to essential medicines necessary for the enjoyment of the right to health” (para. 24).

In its reports over the years the Committee has expressed numerous concerns and made many recommendations about enjoyment of the right to health in the UK.

⁵⁹ “(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”, UDHR, Article 25.

In 2016 it called on the UK to restore the link between benefit rates and the cost of living to “guarantee that all social benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food” (para. 14(b)).

The Committee was also concerned about the lack of adequate measures adopted to increase breastfeeding rates. It recommended the inclusion of policies to support breastfeeding as per World Health Assembly resolutions, including breastfeeding breaks or breastfeeding facilities in educational institutions and workplaces, in a comprehensive national food strategy. (paras. 53-54).

The Committee also recommended higher taxes on junk foods and sugary drinks,⁶⁰ and consideration of strict regulations on their marketing, while ensuring improved access to healthy diets (para. 54).

Having noted further restrictions on access to services following the Immigration Act 2014, it recommended steps be taken to “ensure that temporary migrants and undocumented migrants, asylum seekers, refused asylum seekers, refugees and Roma, Gypsies and Travellers have access to all necessary health-care services and remind[ed] the State party that health facilities, goods and services should be accessible to everyone without discrimination, in line with article 12 of the Covenant.” (para. 56).

It recommended allocation of sufficient resources for mental health sector and urged the UK “to continue its efforts to guarantee the effective implementation of the mental health legislation in all jurisdictions of the [UK] and to ensure the accessibility, availability and quality of mental health care, including for persons in detention” (para. 58).

In 2009, the Committee had recommended training programmes for doctors and health-care professionals on the UK’s obligations under the Covenant, in response to its concern that “members of the medical profession at all levels are not sufficiently aware of [them]”, particularly around dementia and Alzheimer’s (para. 34). It reiterated this recommendation in 2016, in response to concerns “reports of persistent, serious shortcomings in the care and treatment of older persons” (paras. 59-60).

In 2016 the Committee again recommended that the UK should “amend the legislation on termination of pregnancy in Northern Ireland to make it compatible with other fundamental rights, such as women’s rights to health, life and dignity” in light of its concern that such termination was still criminalized “which could lead to unsafe abortions and [which]

⁶⁰ The [Soft Drinks Industry Levy Regulations](#) 2018 came into force in April 2018. [According to the government](#), the levy “will make soft drinks companies pay a charge for drinks with added sugar, and total sugar content of five grams or more per 100 millilitres. That is about 5% sugar content. There is a higher charge for the drinks that contain eight grams or more per 100 millilitres, or about 8% sugar content. This means that pure fruit juices won’t be taxed, because they don’t contain added sugar. Neither will drinks that have a high milk content, because they contain calcium and other nutrients that are vital for a healthy diet”.

disproportionately affects women from low-income families who cannot travel to other parts of the United Kingdom” (paras. 61-62).⁶¹

ICESCR, Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The right to health is also contained in the European Social Charter (ESC), Article 11, involving obligations under three paragraphs all of which have been accepted by the UK.

In 2017, the European Committee of Social Rights concluded that the situation in the UK was in conformity with the obligations under these three paragraphs, pending receipt of much further information, and reserved its position on waiting times for impatient and outpatient care (Article 11.1).

It requested information and statistical data on waiting time trends, as well as updated information on levels of obesity and on the outcome of measures to prevent and reduce obesity among adults and children, and on dental care services and treatments, including who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients (Article 11.1). It also asked for information on the outcome of measures taken to improve mental health, on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures, and for comments on data from the Equality and Human Rights Commission that groups vulnerable to pressures such as poverty and victimisation show high rates of mental illness, with the risk of poor mental health scores being higher for certain ethnic groups with high poverty rates (e.g., the risk of mental health problems is nearly twice as likely for Bangladeshi men than for white men), and on the issue of mental health in the LGBT and transgender population (Article 11.1).

The Committee also asked for confirmation that the school health education curriculum throughout the UK covers prevention of smoking and alcohol abuse, sexual and reproductive

⁶¹ In June 2018, a majority of Supreme Court judges held that the current abortion law in Northern Ireland was “*incompatible with the right to respect for private and family life, guaranteed by article 8 of the [European] Convention [on Human Rights], insofar as it prohibits abortion in cases of rape, incest and fatal foetal abnormality*”, whilst a differently-constituted majority of the judges also held that the Northern Ireland Human Rights Commission did not have standing to bring the case and so the court had no jurisdiction to make a declaration of incompatibility: *Human Rights Commission for Judicial Review (Northern Ireland : Abortion)* (Rev 1) [2018] UKSC 27 (7 June 2018).

education, especially prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits; and for updated information on the concrete measures and campaigns undertaken (Article 11.2). It also asked for updated information on the availability and frequency of screening programmes for pregnant women, and on the availability of screening programmes for the population at large. (Article 11.2). Finally, it also asked for updated information on measures taken to prevent and reduce consumption of alcohol, tobacco and drugs, especially amongst young people, and data on consumption trends; and for updated figures on the coverage rates for the main vaccines (Article 13.3).

Article 11 –The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1 to remove as far as possible the causes of ill health;⁶²

2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;⁶³

3 to prevent as far as possible epidemic, endemic and other diseases.⁶⁴

The right to health is also recognized, for example in the Convention on the Elimination of All Forms of Racial Discrimination, [Article 5 \(e\) \(iv\)](#), in the Convention on the Elimination of All Forms of Discrimination against Women, [Articles 11.1 \(f\) and 12](#), and in the Convention on the Rights of the Child, [Article 24](#).

⁶² The ECSR [concluded in 2017](#) that “[p]ending receipt of the information requested...the situation in the United Kingdom is in conformity with” this paragraph for 2012-2015.

⁶³ The ECSR [concluded in 2017](#) that “[p]ending receipt of the information requested...the situation in the United Kingdom is in conformity with” this paragraph for 2012-2015.

⁶⁴ The ECSR [concluded in 2017](#) that “[p]ending receipt of the information requested...the situation in the United Kingdom is in conformity with” this paragraph for 2012-2015.

13. Everyone has the right to education

This right would be based on ICESCR, Article 13, following on from UDHR, Article 26.⁶⁵

It requires all education to be directed to “the full development of the human personality and the sense of its dignity”; education must strengthen respect for human rights and enable everyone to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and groups.

The right covers primary, secondary and higher education, as well as fundamental or basic education for those who have not received or completed their primary education.

Universal primary education must be free, and free secondary and higher education must be progressively introduced. This means that concrete steps towards achieving free secondary and higher education must be taken.⁶⁶

Respect must be had for the liberty of parents to choose their children’s schools which meet minimum educational standards outside the public system, and for parents’ religious and moral convictions.

The CESCR in [General Comment 13](#) in 1999 stated that education policies, spending and institutions must be closely monitored to identify and redress any *de facto* discrimination, with educational data being disaggregated by the prohibited grounds of discrimination (para. 37). Differences in educational quality which result from “sharp disparities in spending policies” may constitute discrimination (para. 35). The Committee also made strong statements on the importance of academic freedom (paras. 38-40).

The Committee has repeatedly addressed educational inequalities and the cost of higher education in its consideration of the UK’s periodic reports under the Covenant.

In its [2016 report](#), the Committee reiterated its concern about “the persistence of significant inequalities in educational attainment” despite efforts to reduce them. This was especially the case “for children belonging to ethnic, religious or other minorities and children from low-income families, which has the effect of limiting social mobility”. It recommended that the UK take all necessary measures to reduce attainment gaps, including reconsideration of austerity programmes and measures to reduce *de facto* discrimination and segregation of students.

⁶⁵ “(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children”, UDHR, Article 26.

⁶⁶ CESCR, [General Comment 13](#), 1999, The right to education, paragraph 14.

Higher education used to be free in the UK, seemingly making the requirement for its progressive introduction otiose. The regressive introduction of tuition fees and student loans was regarded by the Committee [in 2002](#) as “inconsistent with article 13(2)(c) of the Covenant”; it “has tended to worsen the position of students from less privileged backgrounds, who are already underrepresented in tertiary education” (para. 22). It called on the UK [in 2009](#) “to review its policy on tuition fees for tertiary education with a view to implementing article 13 of the Covenant, which provides for the progressive introduction of free education at all levels” (para. 44). In 2016, in view of its concern that fees were increasing, the Committee recommended that the UK “take all necessary steps to reduce higher education fees” (para. 66).

ICESCR, Article 13

13. 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

13. 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

13.3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

13.4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

The right to education is also contained, though formulated differently, in the European Convention on Human Rights, [Protocol 1](#):

“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.”

and in the [Human Rights Act 1998](#).

The UK entered [a reservation](#) to the second sentence of Article 2 on signing the Convention in 1952, and this is also contained in the [Human Rights Act 1998](#).

There is [extensive jurisprudence](#) on the right to education under the Convention, and careful consideration needs to be given to the relationship between the Convention right and the right to education in the Bill.

The right to education is also protected under [Article 17](#) of the 1996 Revised European Social Charter which the UK has signed but not ratified.

The UK has several other international legal obligations in relation to the right to education.⁶⁷

⁶⁷ The right of children to education is contained in the [Convention on the Rights of the Child](#), Article 28, though its requirements for the progressive introduction of free education are weaker for secondary education, and missing for higher education. The right to education and training is one of the rights which the UK must “guarantee [to] everyone, without distinction as to race, colour, or national or ethnic origin [as well as] equality before the law” under the [Convention on the Elimination of All Forms of Racial Discrimination](#), Article 5(e)(v). The right of persons with disabilities to education is contained in Article 24 of the [Convention on the Rights of Persons with Disabilities](#). Article 10 of the [Convention on the Elimination of All Forms of Discrimination against Women](#) affirms women's rights to non-discrimination in education. The right to education is not contained in the [International Covenant on Civil and Political Rights](#), but Article 18 requires parties to have respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, mirroring ICECSR, Article 13.3. The UK has also been a party since 1962 to the UNESCO [Convention against Discrimination in Education](#).

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.

These rights would be based on ICESCR, Article 15, in line with the UDHR, Article 27.⁶⁸

Although cultural rights have generally received less attention than economic and social rights,⁶⁹ they enjoy equal status with them and have been comprehensively interpreted by the CESCR in two General Comments.

In its [General Comment 21](#) in 2009 on the right to take part in cultural life, the Committee stated that “full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.... In the Committee’s view, culture is a broad, inclusive concept encompassing all manifestations of human existence.” (paras. 1 and 11). It covers “ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives” (para. 13). The rights are both individual and collective (para. 9).

In its [General Comment 17](#) in 2005 on 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, the Committee stated that the right “derives from the inherent dignity and worth of all persons” as an inalienable, fundamental and universal entitlement, and must be distinguished from intellectual property rights which “are first and foremost means by which States seek to provide incentives for inventiveness and creativity, encourage the dissemination of creative and innovative productions, as well as the development of cultural identities, and preserve the integrity of scientific, literary and artistic productions for the benefit of society as a whole” (paras. 1 and 2).

In its [General Comment 24](#) in 2017 on State obligations under the ICESCR in the context of business activities, the Committee stated that the ‘obligation to fulfil’ means that parties

⁶⁸ “(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”, UDHR, Article 27

⁶⁹ A notable academic exception is O’Keefe, R. *The ‘Right to take part in cultural life’ under Article 15 of the ICESCR*. 47 ICLQ (1998) pp. 904-923. See also EU Agency for Fundamental Rights. *Exploring the connections between arts and human rights*. [Report of high-level meeting](#). Vienna, 29 – 30 May 2017

“should ensure that intellectual property rights do not lead to denial or restriction of everyone’s access to essential medicines necessary for the enjoyment of the right to health, or to productive resources such as seeds, access to which is crucial to the right to food and to farmers’ rights”. It also stated that research and development support for new products and services should aim at fulfilment of ICESCR rights for example “by supporting the development of universally designed goods, services, equipment and facilities, to advance the inclusion of persons with disabilities” (para. 24).

In its [1997 report](#) on the UK, the Committee regarded as “unjustified” the different financial support and status of the Irish language in Northern Ireland compared with Gaelic in Scotland and Welsh in Wales (paras. 20 and 32), and recommended in its [2009 report](#) (para. 37) and in its [2016 report](#) (para. 68) adoption of an Irish Language Act.

ICESCR, Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

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.

This formulation would be based on ICESCR, Article 2.2, in line with the UDHR, Article 2,⁷⁰ updated to take into account of [General Comment 20](#) in 2009 on non-discrimination in economic, social and cultural rights, and protected characteristics under the [Equality Act 2010](#).

It would not be a stand-alone right, but a right which applies if the circumstances “fall within the ambit” of one of the other rights that is in issue.

This would follow the position under the Human Rights Act 1998 and the European Convention on Human Rights (Article 14), where discrimination is permitted only if it is justified.⁷¹ “Other status” includes disability, age and immigration status.

In contrast, under the International Covenant on Civil and Political Rights non-discrimination is a stand-alone right (Article 26) as well as a right which rises in relation to other rights (Article 2.1).

In its 2016 report, the Committee on Economic, Social and Cultural Rights recommended that the UK should bring into force (i) the duty on public authorities in [section 1](#) of the Equality Act 2010 to consider socio-economic disadvantage in decision-making processes,⁷² and (ii) the prohibition of so-called ‘intersectional discrimination’ (where people are discriminated against because of two or more protected characteristics). The duty does not apply in Northern Ireland.

As already noted, the Committee in 2016 also made recommendations in relation to the:

- “persistent discrimination against migrant workers in the labour market” (paras. 34-35),
- discrimination in the provision of accommodation for Roma, Gypsy and Traveller communities (paras. 49-50),

⁷⁰ “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”, UDHR, Article 2, first sentence.

⁷¹ The Supreme Court summarised the fourfold justification test in 2015: “(i) does the measure have an (*sic*) legitimate aim sufficient to justify the limitation of a fundamental right; (ii) is the measure rationally connected to that aim; (iii) could a less intrusive measure have been used; and (iv) bearing in mind the severity of the consequences, the importance of the aim and the extent to which the measure will contribute to that aim, has a fair balance been struck between the rights of the individual and the interests of the community?” *R (Tigere) v Secretary of State for Business, Innovation and Skills (Just For Kids Law intervening)* 2015] UKSC 57, *per* Lady Hale, paragraph 33.

⁷² Since then, section 1 has been brought into effect [in Scotland](#). The [Wales Act 2017](#) also laid the foundations for bringing the duty into effect, where it appears to be under consideration in the light of its [Well-being of Future Generations \(Wales\) Act 2015](#).

- “persistent inequalities in housing Catholic families in North Belfast” (paras. 49-50),
- continued discrimination faced by refugees, asylum seekers, refused asylum seekers, and Roma, Gypsies and Travellers in accessing health-care services (paras. 55-56),
- “the persistence of significant inequalities in educational attainment, especially for children belonging to ethnic, religious or other minorities and children from low-income families” (paras. 63-64);
- *de facto* discrimination and segregation of students based on their religion, national or social origin, as well as their economic background (paras. 63-64).

ICESCR, Article 2.2

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The 1961 European Social Charter refers in its preamble to the securing of social rights “without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin”.

In March 2018, in its [update report on Great Britain’s implementation](#) of the ICESCR, the Equality and Human Rights Commission raised several concerns regarding discrimination in socio-economic rights.

The Child Poverty Action Group has brought many welfare rights [test cases](#) on the basis of non-discrimination.

PR, 12/4/19