

# The United Kingdom's Third Universal Periodic Review

## Equality and Human Rights Commission – individual UPR submission – 22 September 2016

### About the Commission:

- This report is submitted by the Equality and Human Rights Commission (EHRC) for the UK's third assessment under the Universal Periodic Review (UPR).
- The EHRC is a statutory public body established in 2007 to promote and protect human rights in Great Britain, and is one of three 'A' status UK National Human Rights Institutions. The EHRC's 'A' status was renewed in 2015.<sup>1</sup>
- This report covers matters that are the reserved responsibility of the UK Government, as well as those which have been devolved to the Scottish and Welsh Governments.<sup>2</sup> The EHRC's statutory remit does not extend to Northern Ireland.

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<sup>1</sup> See <https://www.equalityhumanrights.com/en/our-human-rights-work/our-role-national-human-rights-institution-nhri> [accessed: 22 August 2016]

<sup>2</sup> By agreement with the Scottish Human Rights Commission.

# Introduction

1. This report covers 12 priority themes, related to 54% of the UK's 132 recommendations from the 2012 second cycle of the UPR.<sup>3</sup>
2. It includes 30 recommendations for the UK, Scottish and Welsh Governments to improve the promotion and protection of human rights across Great Britain.
3. **Recommendation:**
  - **The establishment of a UK national action plan on human rights,<sup>4</sup> learning from Scotland's National Action Plan for Human Rights,<sup>5</sup> including concrete actions to implement UN recommendations.<sup>6</sup>**

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

4. The UK is party to the European Convention on Human Rights (ECHR), incorporated into domestic law through the Human Rights Act 1998 (HRA). The EHRC considers that the HRA:
  - Is well-crafted to protect and promote human rights.
  - Is embedded in the UK's constitutional arrangements.
  - Maintains parliamentary sovereignty and a primary role for domestic courts.
5. The UK Government has committed to repeal the HRA and bring forward proposals on a Bill of Rights.<sup>7</sup>
6. **Recommendation: UK Government should:**
  - **Ensure proposals for a Bill of Rights do not reduce the protections or access to redress in the Human Rights Act.<sup>8</sup>**

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<sup>3</sup> Where a recommendation contained in this report relates to a recommendation from the UK's second cycle UPR, a footnote has been added citing the relevant number and source. See also Annex A and the EHRC's mid-term report from the second cycle of the UPR. Available at: <https://www.equalityhumanrights.com/en/publication-download/universal-periodic-review-mid-term-report> [accessed: 22 August 2016]

<sup>4</sup> See EHRC (2016), 'Socio-economic rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of ICESCR', p.71. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 22 August 2016]

<sup>5</sup> See <http://www.scottishhumanrights.com/actionplan/readfullreport> [accessed: 22 August 2016]

<sup>6</sup> Relates to second cycle recommendation 46, which enjoys the UK Government's support, stating that: 'The UK already ensures rights and fundamental freedoms in the European Convention on Human Rights are and continue to be enshrined in our domestic laws'. See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]. This submission uses the UK Government's own terminology in describing its position on each recommendation in terms of whether it enjoys their support, enjoys their support in part or does not enjoy their support. However the EHRC recognises that under the modalities of the UPR, the reviewed State must choose to either accept or note the recommendations received.

<sup>7</sup> See <https://www.gov.uk/government/speeches/queens-speech-2016> [accessed: 22 August 2016]. Both the Welsh and Scottish Governments have voiced opposition to proposals to repeal the Human Rights Act. See <http://news.scotland.gov.uk/News/First-Ministers-of-Scotland-and-Wales-meet-1988.aspx> [accessed: 22 August 2016]

7. We encourage Britain's leading role in shaping the international human rights framework, including its support for the UN's first Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.<sup>9</sup> The UK has ratified seven of the nine 'core' human rights conventions but not directly incorporated them into domestic law.<sup>10</sup> The Scottish and Welsh Governments have enhanced the status of the Convention on the Rights of the Child in national law,<sup>11</sup> providing models to give effect to all Convention provisions. The UK Government has not supported the establishment of a Convention on the Rights of Older Persons.

**8. Recommendation: UK and devolved governments should:**

- **Enhance the status of all seven ratified human rights conventions in domestic law.**
- **Support the development of international human rights frameworks, such as a Convention on the Rights of Older Persons.<sup>12</sup>**

9. The Equality Act 2010 is the most comprehensive anti-discrimination legislation in the world. It covers nine 'protected characteristics' across Great Britain: gender, race, disability, sexual orientation, transgender status, age, religion or belief, pregnancy and maternity, and marriage/civil partnership. Several of its provisions have not been brought into legal effect, or have been repealed by the UK Government.<sup>13</sup>

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<sup>8</sup> Relates to second cycle recommendation 32 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>9</sup> See <https://www.gov.uk/government/world-location-news/human-rights-council-32-sexual-orientation-and-gender-identity-statement-30-june-2016> [accessed: 22 August 2016]

<sup>10</sup> The two Conventions not yet ratified by the UK are the Convention on the Rights of Migrant Workers and their Families, and the Convention on Enforced Disappearances (CED). No apparent progress has been made on ratifying the CED despite the UK Government having accepted UPR recommendations on this in 2012. See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>11</sup> The Rights of Children and Young Persons (Wales) Measure 2011. Available at: <http://www.legislation.gov.uk/mwa/2011/2/contents> [accessed: 23 August 2016]. For information on the measure, see <http://gov.wales/topics/people-and-communities/people/children-and-young-people/rights/uncrc/?lang=en> [accessed: 23 August 2016]. The Children and Young People (Scotland) Act 2014 Sections 1 and 2. Available at: <http://www.legislation.gov.uk/asp/2014/8/contents/enacted> [accessed: 22 August 2016]

<sup>12</sup> Relates to second cycle recommendations 9 (does not enjoy the UK's support), 10 and 32 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>13</sup> Including:

- Section 1 on a socio-economic duty.
- Section 9(5) on amending the statutory definition of race to include caste.
- Section 14 on intersectional (dual) discrimination.
- Section 40 on third-party harassment.
- Section 78 on gender pay reporting. The UK Government has committed to introducing mandatory gender pay gap reporting for larger employers from April 2017. See <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-04-18/34340/> [accessed: 22 August 2016]. Provisions of the Equality Act 2010 that have not yet been brought into legal effect, or have been repealed, include:

10. The EHRC welcomes the UK Government's commitment to keep the Equality Act 2010 under review in relation to gender identity.<sup>14</sup>

**11. Recommendation: UK Government should:**

- **Reinstate all original and implement any outstanding provisions of the Equality Act 2010.**<sup>15</sup>

## **Independent and adequate standard of living and social protection**

12. Since 2012, successive UK Governments<sup>16</sup> have reformed social security. Some reforms have adversely affected children and groups with protected characteristics, including women and ethnic minorities.<sup>17</sup>

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- Section 1, which sets out the duty of certain public authorities to have due regard to the desirability of reducing socio-economic disadvantage when taking strategic decisions about how to exercise their functions. This section has not been brought into force, but could provide a model for enhancing the status of the International Convention on Economic, Social and Cultural Rights (ICESCR) in domestic law. The EHRC has raised concerns that the duty has not been commenced in Great Britain, and has supported a UK Government amendment to the Scotland Bill enabling Scottish Ministers to commence the duty in respect of Scottish public bodies at a time of their choosing. The Scotland Act 2016 gives Scottish Ministers the power to commence the duty. That power came into force on 23 May 2016 and the First Minister delivered a speech on 25 May 2016 confirming that her Government would commence the socio-economic duty in this Parliament. The EHRC has also supported the proposal in the Wales Bill to devolve powers to commence the socio-economic duty in relation to Welsh public bodies to the National Assembly for Wales.

- Section 9(5), which was amended by S97(6) of the Enterprise and Regulatory Reform Act 2013 so that a Minister must, by order, amend the statutory definition of race to include caste and may provide for exceptions in the Act to apply or not to apply to caste. The EHRC supported this amendment. . The power under subsection 5(a) may not be exercised before the end of the period of 5 years beginning with the day on which this Act is passed. That indicates that Ministers cannot exercise this function until 2018. However, to date, the order has not been made.

- Section 14, which is the provision for tackling intersectional (dual) discrimination. In March 2011, the UK Government announced that it would not bring this section into force.

- Section 40, which is the provision on third-party harassment. In October 2013, the UK Government repealed this provision.

- Section 78, which covers gender pay reporting measures, which the UK Government says it will not implement while it is working with business on how to best support increased transparency on a voluntary basis. The UK Government will annually review this approach, in order to assess whether this is successful and take a view over time whether alternatives are required, including using a mandatory approach through section 78 of the Equality Act 2010.

- Section 106, which would require registered political parties to publish data on the diversity of party candidates seeking selection, enjoyed cross-party support. However, it was not enacted by the Coalition Government.

<sup>14</sup> See <http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2015/transgender-equality-government-response-published-16-17/> [accessed: 22 August 2016]

<sup>15</sup> Relates to second cycle recommendations 39, 42, 49, 50, 52, 62, 116 (enjoys the UK's support), 66 (enjoys the UK's support in part) and 61 (does not enjoy the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>16</sup> While the UK Government has reserved powers in the area of social security, devolved Governments have taken separate steps to mitigate the impact of the changes in Scotland and Wales. Furthermore, the Scotland Act 2016 will devolve significant new powers in this area to the Scottish Parliament. The Scottish Government has committed to ensuring that 'dignity and respect' are at the centre of any new social security regime in Scotland. For further information see EHRC (2016), 'Socio-economic rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of

13. Social security reforms<sup>18</sup> have had a particularly disproportionate, cumulative impact on the rights to independent living and an adequate standard of living for disabled people.<sup>19 20 21</sup> The UK Government has assessed the equality impact of individual policies,<sup>22</sup> but not the cumulative impact of several changes. An EHRC-funded study found that cumulative impact assessments are both feasible and practicable.<sup>23</sup>

**14. Recommendation: UK Government should:**

- **Extend monitoring and analysis of spending decisions to include the cumulative impact on individuals with protected characteristics.**
- **Give primary consideration to the best interests of the child.**
- **Mitigate adverse impacts where identified.**
- **Justify regressive measures by demonstrating they are temporary, necessary, proportionate, non-discriminatory and do not undercut a core minimum level of human rights protections.<sup>24</sup>**

15. The Welfare Reform and Work Act 2016 changed how the UK Government assesses child poverty. <sup>25</sup> It restates the four indicators in the Child Poverty

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ICESCR'. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 22 August 2016]

<sup>17</sup> Ibid.

<sup>18</sup> Including the closure of the Independent Living Fund (except in Scotland where the Scottish Government has continued to protect eligible users' awards via the Scottish Independent Living Fund), the transition from Disability Living Allowance to Personal Independence Payments, some measures brought about through Universal Credit, the under-occupation deduction to housing benefit and other measures. See EHRC (2016), 'Socio-economic rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of ICESCR'. Available at: <http://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 24 August 2016]

<sup>19</sup> This is also the subject of an independent inquiry being conducted by the UN Committee on the Rights of Persons with Disabilities. See House of Lords Research Briefing: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7367> [accessed: 22 August 2016]

<sup>20</sup> Social Security Advisory Committee (2014), 'The Cumulative Impact of Welfare Reform: a commentary'. Available at: <https://www.gov.uk/government/publications/ssac-occasional-paper-12-the-cumulative-impact-of-welfare-reform-a-commentary> [accessed: 22 August 2016]

<sup>21</sup> The Welsh Government did analysis of welfare reforms on people with protected characteristics. See link stage 3 research at:

<http://gov.wales/topics/people-and-communities/welfare-reform-in-wales/analysing-reforms/?lang=en> [accessed: 22 August 2016]

<sup>22</sup> See <http://www.publications.parliament.uk/pa/cm201516/cmpublic/welfarereform/memo/wrw85.htm> [accessed: 22 August 2016]

<sup>23</sup> Reed, H. and Portes, J. (2014), 'Cumulative Impact Assessment: A Research Report by Landman Economics and NIESR for the EHRC'. Available at: <https://www.equalityhumanrights.com/sites/default/files/research-report-94-cumulative-impact-assessment.pdf> [accessed: 22 August 2016]

<sup>24</sup> Relates to second cycle recommendations 42, 49 and 101 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>25</sup> Welfare Reform and Work Act 2016. Available at: <http://www.legislation.gov.uk/ukpga/2016/7/contents/enacted/data.htm> [accessed: 22 August 2016]

Act 2010<sup>26</sup> and an obligation to publish data against these annually,<sup>27</sup> but repeals the binding targets to reduce child poverty.<sup>28</sup> The Scottish Government is reintroducing legally binding targets.<sup>29</sup>

**16. Recommendation: UK Government should:**

- **Establish clear accountability mechanisms for eradicating child poverty, including binding targets, with a set timeframe and measurable indicators.<sup>30</sup>**

17. The lack of residential and transit accommodation across Great Britain<sup>31</sup> affects Gypsies' and Travellers' right to an adequate standard of living and, through consequent barriers, to accessing services to education, employment and health.<sup>32</sup> Objections from local councillors and residents, often stigmatising, are the most common barrier to site provision.<sup>33</sup>

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<sup>26</sup> 'Domain F: Standard of living' from the 'Is Britain Fairer?' Evidence Paper Series reported that the child poverty targets, which were legally binding at the time, were likely to be missed by a considerable margin (see pp.103-4). Available at: <https://www.equalityhumanrights.com/en/britain-fairer/britain-fairer-report/supporting-evidence/standard-living-domain> [accessed: 22 August 2016]

<sup>27</sup> While the Child Poverty Act 2010 (CPA) included UK-wide targets, the devolved governments also have their own strategies, powers and targets to tackle child poverty within their jurisdictions. The new reporting duties under the CPA would apply to England alone. Section A1A CPA, as added by section 5 WRWA. Through the WRWA, the Child Poverty Act 2010 was renamed the Life Chances Act 2010. Available at: <http://www.legislation.gov.uk/ukpga/2016/7/contents/enacted/data.htm> [accessed: 22 August 2016]

<sup>28</sup> EHRC (2016), 'Parliamentary briefing: Welfare Reform and Work Bill, Report Stage, Clauses 1, 4, 7 and 8, House of Lords, 25/01/16'. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/welfare-reform-and-work-bill-report-stage-clause-1-4-7-and-8-house-lords-25-january-2016> [accessed: 22 August 2016]

<sup>29</sup> See <http://news.scotland.gov.uk/News/Eradicating-child-poverty-2738.aspx> [accessed: 22 August 2016]

<sup>30</sup> Relates to second cycle recommendation 41 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>31</sup> This situation may be further impacted by recent planning policy changes in England, which restrict the definition of a Gypsy or Traveller to exclude those who have permanently ceased travelling. See EHRC (2016), 'Race rights in the UK: Submission to the UN Committee on the Elimination of Racial Discrimination in advance of the public examination of the UK's implementation of ICERD'. Available at: [https://www.equalityhumanrights.com/sites/default/files/race-rights-in-the-uk-july-2016\\_0.pdf](https://www.equalityhumanrights.com/sites/default/files/race-rights-in-the-uk-july-2016_0.pdf) [accessed: 22 August 2016]. In Scotland, while there is a requirement to assess Gypsy and Traveller site provision need in the five-yearly Housing Demand Needs Assessment, there is no consequent requirement for this need to be met by local authorities. See <https://www.equalityhumanrights.com/en/publication-download/developing-successful-site-provision-scotland%E2%80%99s-gypsytraveller-communities> [accessed: 22 August 2016]. The Housing (Wales) Act 2014 places a duty on local authorities to provide sites for Gypsies and Travellers where a need has been assessed and identified. See <http://www.legislation.gov.uk/anaw/2014/7/contents> [accessed: 22 August 2016]

<sup>32</sup> United Nations Human Rights Council (2013), 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik'. Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx> [accessed: 17 June 2016]

<sup>33</sup> EHRC (2014), 'Response of the Equality and Human Rights Commission to the Department for Communities and Local Government's Consultation – "Ensuring Fairness in the Planning System", November 2014'. Available at: <https://www.equalityhumanrights.com/en/legal-responses/consultation-responses> [accessed: 24 August 2016].

## **18. Recommendation: UK and devolved governments should:**

- **Improve the adequacy of site provision for Gypsies and Travellers across all local authorities.**
- **Work together to adopt a GB-wide<sup>34</sup> Gypsy/Roma and Irish Traveller integration strategy<sup>35</sup> focused on access to education, employment, healthcare and housing.<sup>36</sup>**

## **Hate crime, hate speech and identity-based violence**

19. Between 2013/14 and 2014/15, police recorded hate crime increased<sup>37</sup> in all five categories in England and Wales, with a total increase of 18%.<sup>38</sup> In Scotland, the number of charges in all hate crime categories, with the exception of race, increased in 2015-16.<sup>39</sup> Across Great Britain, race remains the most commonly recorded motivation for hate crime. EHRC research has highlighted significant under-reporting of disability<sup>40</sup> and lesbian, gay, bisexual and transgender hate crime.<sup>41</sup> In the two weeks following the EU Referendum, there was a 57% increase in online reports of hate crime in England and Wales.<sup>42</sup>

## **20. Recommendation: UK Government should:**

- **Report on the impact of the new hate crime action plan.**

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<sup>34</sup> The Welsh Government has a Gypsy and Traveller Framework for Action and Delivery Plan entitled 'Travelling to a Better Future', which aims to ensure that the needs of Gypsies and Travellers are assessed, planned and implemented in a more strategic way. See <http://gov.wales/topics/people-and-communities/communities/communitycohesion/gypsytravellers/?lang=en> [accessed: 24 August 2016]

<sup>35</sup> Council of the European Union (2011), 'Council Conclusions on an EU Framework for National Roma Integration Strategies up to 2020'. Available at:

[http://ec.europa.eu/justice/discrimination/files/cc3089\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/cc3089_en.pdf) [accessed: 23 August 2016]

<sup>36</sup> Relates to second cycle recommendations 53 and 117 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>37</sup> The recent recognition of under-reporting of hate crimes has led to greater efforts to encourage reporting, so it is unclear whether increases (or decreases) in numbers represent greater reporting or more hate crimes being committed. In fact, because the numbers of recorded hate crimes are so low, we can cautiously welcome increased reports, as long as they correlate with increased prosecutions, conviction rates and sentence uplifts.

<sup>38</sup> In 2014/15 in England and Wales, police recorded hate crime was distributed across the five monitored categories as follows: race: 82%; sexual orientation: 11%; religion: 6%; disability: 5%; and transgender: 1%. These proportions sum to more than 100% as a hate crime can have more than one motivating factor. See Home Office (2015), 'Hate Crime, England and Wales, 2014/15'. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/467366/hosb0515.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467366/hosb0515.pdf) [accessed: 22 August 2016]

<sup>39</sup> Crown Office and Procurator Fiscal Service (2016), 'Hate crime in Scotland 2015-16'. Available at: <http://www.crownoffice.gov.uk/media-site/media-releases/1329-hate-crime-in-scotland-2015-> [accessed: 22 August 2016]

<sup>40</sup> Coleman, C., Sykes, W. and Walker, A. (2013), 'Crime and disabled people'. EHRC. Available at: <https://www.equalityhumanrights.com/en/publication-download/research-report-90-crime-and-disabled-people> [accessed: 22 August 2016]

<sup>41</sup> Chakraborti, N. and Hardy, S-J. (2015), 'LGB&T Hate Crime Reporting: Identifying Barriers and Solutions'. EHRC. Available at: <https://www.equalityhumanrights.com/en/publication-download/lgbt-hate-crime-reporting-identifying-barriers-and-solutions> [accessed: 22 August 2016]

<sup>42</sup> Police Scotland has not recorded a corresponding rise in hate crimes in Scotland. See <http://news.npcc.police.uk/releases/hate-crime-is-unacceptable-in-any-circumstances-say-police> [accessed: 22 August 2016]

- **Work with criminal justice agencies to develop new preventative measures based on recent research on motivations.**
- **Review the effectiveness of the current legal framework.**<sup>43 44</sup>

21. In April 2015, the UN High Commissioner for Human Rights criticised the UK tabloid press for ‘demonising foreigners and minorities’, which ‘has continued unchallenged under the law for far too long’.<sup>45</sup> The EHRC and many international experts share these concerns.<sup>46</sup>

## **22. Recommendation: UK Government should:**

- **Work with relevant stakeholders to tackle the negative portrayal of particular groups by the media, such as Gypsies and Travellers, Muslims, lesbian, gay, bisexual and transgender people, asylum seekers and refugees.**<sup>47</sup>

23. The EHRC considers violence against women and girls (VAWG) to be ‘one of the most pervasive human rights issues’ in the UK.<sup>48 49</sup> Ratification of the

<sup>43</sup> As recommended by the Law Commission. See Law Commission (2014), ‘Hate Crime: Should the Current Offences be Extended?’. Available at:

<https://www.gov.uk/government/publications/hate-crime-should-the-current-offences-be-extended> [accessed: 17 March 2016].

<sup>44</sup> Relates to second cycle recommendations 59, 60, 90 (enjoys the UK’s support) and 91 (enjoys the UK’s support in part). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>45</sup> OHCHR. 2015. UN Human Rights Chief urges UK to tackle tabloid hate speech, after migrants called “cockroaches”. [ONLINE]. Available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885&LangID=E> [accessed: 22 August 2016]

<sup>46</sup> See European Commission on Racism and Intolerance (2010), ‘ECRI Report on the United Kingdom’, p.46. Available at: [http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united\\_kingdom/GBR-CbC-IV-2010-004-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united_kingdom/GBR-CbC-IV-2010-004-ENG.pdf) [accessed: 22 August 2016]. See also Committee on the Elimination of Racial Discrimination (2016), ‘Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom of Great Britain and Northern Ireland’. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2fCO%2f21-23&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2fCO%2f21-23&Lang=en) [accessed: 26 August 2016]

<sup>47</sup> Relates to second cycle recommendations 59, 60, 90, 97, 107 (enjoys the UK’s support), 11 and 12 (does not enjoy the UK’s support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>48</sup> EHRC (2014), ‘Submission to the United Nations Committee Pre-Sessional Working Group on the United Kingdom’s Implementation of the International Covenant on Civil and Political Rights’, pp. 54-7. Available at: [www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights](http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights) [accessed: 22 August 2016]

<sup>49</sup> In 2015, there was a 30% increase in police recorded rape in England and Wales (note that, in 2014, the UK Statistics Authority found that the underlying data on crimes recorded by the police in England and Wales may not be reliable. As such, these police recorded crime figures should be treated with caution). In 2014-15 in Scotland, there was an increase of 5% in police recorded rape. See

<http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingdecember2015> [accessed: 22 August 2016] and

<http://www.gov.scot/Resource/0048/00484776.pdf> [accessed: 22 August 2016]. Additionally, more than one in four women in England and Wales will experience domestic violence in their lifetimes (differing legislative definitions of domestic violence means that direct comparison with Scotland is not possible). See

<http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolence>

Istanbul Convention would help the UK to tackle VAWG,<sup>50</sup> but further action is needed in order to ratify and implement it fully, such as the adequate provision of specialist support services.<sup>51</sup>

#### **24. Recommendation: UK Government should:**

- **Make the necessary law, policy and practice changes to be able to ratify the Istanbul Convention and dedicate sufficient resources to central, devolved and local authorities to ensure its effective implementation.<sup>52</sup>**

### **Access to civil justice**

25. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) significantly narrowed the scope of civil legal aid in England and Wales.<sup>53</sup> The number of cases for initial advice has fallen by two-thirds, and representation in court is down by a third.<sup>54</sup> LASPO may have a disproportionately adverse impact on children, disabled people, ethnic minorities and women, potentially limiting access to justice.<sup>55</sup>

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[imeandsexualoffences/yearendingmarch2015/chapter4intimatepersonalviolenceandpartnerabuse](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48481/imeandsexualoffences/yearendingmarch2015/chapter4intimatepersonalviolenceandpartnerabuse) [accessed: 22 August 2016]

<sup>50</sup> The Scottish and Welsh Governments have both recently passed their own legislation to tackle VAWG. The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 has come into force in Scotland, creating the offence of aggravated abusive harm (whether intentional or reckless) to a partner or ex-partner. See <http://www.legislation.gov.uk/asp/2016/22/contents/enacted> [accessed: 22 August 2016]. The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act aims to improve the public sector response to such abuse and violence. See <http://gov.wales/topics/people-and-communities/communities/safety/domesticabuse/?lang=en> [accessed: 22 August 2016]

<sup>51</sup> Joint Committee on Human Rights (2015), 'Violence against women and girls: Sixth Report of Session 2014-15, section 4'. Available at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/violence-against-women-and-girls-report/> [accessed: 16 February 2016]

<sup>52</sup> Relates to second cycle recommendations 29, 40, 51, 69, 70 and 71 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>53</sup> Since the introduction of LASPO, civil legal aid in England and Wales does not cover private family law, housing, non-asylum immigration, social security, employment, debt, community care or education. The Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1 is available at:

<http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted> [accessed: 22 August 2016]

<sup>54</sup> Legal Aid Agency (2016), Legal aid statistics main tables: October to December 2015, Table 1.2: Civil legal aid workload summary since 2001–02. Available at:

<https://www.gov.uk/government/statistics/legal-aid-statistics-october-to-december-2015> [accessed: 22 August 2016]

<sup>55</sup> For more information, please see Anthony, H. and Crilly, C. (2015), 'Equality, human rights and access to civil law justice: a literature review'. Equality and Human Rights Commission Research Report 99. Available at: <https://www.equalityhumanrights.com/en/publication-download/equality-human-rights-and-access-civil-law-justice-literature-review> [accessed: 24 August 2016]. The EHRC has also provided evidence on the impact of changes to civil legal aid in the following Treaty Body submissions:

- EHRC (2015), 'Civil and Political Rights in the UK: Equality and Human Rights Commission Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights'. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fC%2fSS%2fGBR%2f20681&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fC%2fSS%2fGBR%2f20681&Lang=en) [accessed: 22 August 2016]

## 26. Recommendation: UK Government should:

- Expedite the review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).
- Commission independent research on the equality and human rights impact of LASPO on disabled people, ethnic minorities, children and women.
- Mitigate any indirectly discriminatory effects.<sup>56</sup>

27. Changes to court fees in England and Wales, and tribunal fees in Great Britain, may also affect access to justice. New employment tribunal (ET) fees coincided with a 59% decrease in disability discrimination cases and a 50% drop in pregnancy-related cases<sup>57</sup> (recommendations on the latter were rejected by the UK Government).<sup>58</sup> The Scottish Government has pledged to abolish ET fees.<sup>59</sup> The EHRC shares the concerns of the UK Parliament's

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- EHRC (2015), 'Children's Rights in the UK: Submission to the UN Committee on the Rights of the Child', pp. 82-6. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/convention-rights-child> [accessed: 22 August 2016]

- See EHRC (2016), 'Socio-economic rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of ICESCR'. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 22 August 2016]

- See EHRC (2016), 'Race rights in the UK: Submission to the UN Committee on the Elimination of Racial Discrimination in advance of the public examination of the UK's implementation of ICERD'. Available at: [https://www.equalityhumanrights.com/sites/default/files/race-rights-in-the-uk-july-2016\\_0.pdf](https://www.equalityhumanrights.com/sites/default/files/race-rights-in-the-uk-july-2016_0.pdf) [accessed: 22 August 2016]

- See EHRC (2016), 'Legal aid reforms and women's access to justice' (EHRC shadow report to the UN Committee on the Elimination of Discrimination against Women: Follow up procedure). Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/convention-elimination-discrimination> [accessed: 24 August 2016]

<sup>56</sup> As LASPO only came into effect in April 2013, access to justice was largely overlooked in the second cycle (though recommendation 76 did refer to the provision of legal aid for victims of trafficking). However, it was raised as an emerging challenge in the EHRC's mid-term update. See EHRC (2014), 'Mid-Term Universal Periodic Review Report'. Available at: <https://www.equalityhumanrights.com/en/publication-download/universal-periodic-review-mid-term-report> [accessed: 22 August 2016]

<sup>57</sup> MoJ (2016), Tribunal and gender recognition statistics quarterly: October to December 2015, Table 1.2. Available at: <https://www.gov.uk/government/statistics/tribunal-and-gender-recognition-statistics-quarterly-october-to-december-2015> [accessed: 22 August 2016]

<sup>58</sup> See the Department for Business, Innovation and Skills (BIS) and EHRC joint research to investigate the prevalence and nature of pregnancy discrimination and disadvantage in the workplace. The results are based on interviews with 3,034 employers and 3,254 mothers. This is available at: <https://www.equalityhumanrights.com/en/file/10281/download?token=ngUomHRr> [accessed: 22 August 2016]. In March 2016, the UK Government rejected two of the report's recommendations, which were to take action to ensure employment tribunal fees are not a barrier to access to justice, and to consider increasing the three-month time limit for pregnancy-related applications. See <https://www.gov.uk/government/publications/pregnancy-and-maternity-related-discrimination-and-disadvantage-government-response> [accessed: 22 August 2016]

<sup>59</sup> Section 39 of the Scotland Act 2016 would enable transfer of powers over specified tribunal functions to Scottish tribunals, allowing the Scottish Parliament to determine tribunal fees, however the Scottish Government has pledged to abolish the fees when they are clear how the transfer of powers and responsibilities will work. See <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted> [accessed: 22 August 2016]

Justice Committee<sup>60</sup> about the proposed 500% increase in immigration and asylum tribunal fees.<sup>61</sup>

**28. Recommendation: UK Government should:**

- **Mitigate adverse impacts from increased employment tribunal (ET) fees.**
- **Delay the proposed increase of immigration and asylum tribunal fees until the review of ET fees has reported.**<sup>62</sup>

## Human trafficking and modern slavery

29. The Modern Slavery Act 2015 (MSA)<sup>63</sup> and Human Trafficking and Exploitation (Scotland) Act (2015)<sup>64</sup> are major steps forward. However, the EHRC has highlighted gaps in the legislation and implementation, including:

- Lack of detail in provisions to identify and support victims.
- Gaps in criminal offences.
- Weaknesses in the National Referral Mechanism – for identifying and supporting trafficking victims.
- Weaknesses in the powers and resources of the Independent Anti-Slavery Commissioner.<sup>65</sup>

**30. Recommendation: UK and Scottish governments should:**

- **Monitor the effectiveness of anti-trafficking legislation and amend it to address any weaknesses.**
- **Strengthen the National Referral Mechanism.**<sup>66</sup>

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<sup>60</sup> See <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news-parliament-20151/courts-and-tribunals-fees-report-published-16-17/> [accessed: 22 August 2016]

<sup>61</sup> See the Response of the Equality and Human Rights Commission to the consultation on proposals for the First-tier Tribunal (Immigration and Asylum Chamber) and Upper Tribunal (Immigration and Asylum Chamber) fees. Available at: <https://www.equalityhumanrights.com/en/legal-responses/consultation-responses/consultation-response-proposals-amend-immigration-and-asylum> [accessed: 22 August 2016]

<sup>62</sup> As the increased fees came into effect after 2012, this issue was largely overlooked in the second cycle. However, it was raised as an emerging challenge in EHRC's mid-term update. See EHRC (2014), 'Mid-Term Universal Periodic Review Report'. Available at: <https://www.equalityhumanrights.com/en/publication-download/universal-periodic-review-mid-term-report> [accessed: 22 August 2016]

<sup>63</sup> Modern Slavery Act 2015. Available at: <http://services.parliament.uk/bills/2014-15/modernslavery.html> [accessed: 22 August 2016]

<sup>64</sup> Most of the provisions in the MSA extend to England and Wales only, although some also extend to Scotland and some to Northern Ireland. The Human Trafficking and Exploitation (Scotland) Act 2015 replicates many provisions of the MSA at the devolved level. See [www.legislation.gov.uk/asp/2015/12/enacted](http://www.legislation.gov.uk/asp/2015/12/enacted) [accessed: 3 February 2016]

<sup>65</sup> EHRC (2015), 'Children's Rights in the UK: Submission to the UN Committee on the Rights of the Child', pp. 82-6. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/convention-rights-child> [accessed: 22 August 2016]

<sup>66</sup> Relates to second cycle recommendations 72, 73, 74 (enjoys the UK's support), and 75 and 76 (enjoys the UK's support in part). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

31. There are also concerns about MSA provisions for the identification and support of child victims. Data suggests approximately 60% of suspected child victims of trafficking in local authority care go missing, and two-thirds are never found.<sup>67 68</sup>

**32. Recommendation: UK Government should:**

- **Establish statutory independent guardians for all unaccompanied and separated children entering the UK.**
- **Introduce a statutory duty to record and report trafficked and refugee children who go missing from care.<sup>69</sup>**

## Just and fair conditions of work

33. All people should be able to access work free from discrimination, but some still experience difficulties.<sup>70</sup> Younger groups were worst affected by the recession, and have taken the longest to recover.<sup>71</sup> The EHRC welcomes the UK Government's pledge to halve the employment gap for disabled people (at 31.7%).<sup>72</sup>

**34. Recommendation:**

- **UK and devolved governments should take positive steps to close equality gaps in employment.**

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<sup>67</sup> House of Lords European Union Committee (2016), 'Children in crisis: unaccompanied migrant children in the EU'. Available at: <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/34/3402.htm>. See also All Party Parliamentary Group for Runaway and Missing Children and the All Party Parliamentary Group for Looked After Children and Care Leavers (2012), 'Report from the Joint Inquiry into Children who go Missing from Care', p.13. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/175563/Report\\_-\\_children\\_who\\_go\\_missing\\_from\\_care.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175563/Report_-_children_who_go_missing_from_care.pdf) [accessed: 22 August 2016], ECPACT and Save the Children (2007), 'Missing Out: A Study of Trafficking in the North West, North East and West Midlands', p.5. Available at:

[http://www.ecpat.org.uk/sites/default/files/missing\\_out\\_2007.pdf](http://www.ecpat.org.uk/sites/default/files/missing_out_2007.pdf) [accessed: 22 August 2016]

<sup>68</sup> This aligns with Europol concerns that by January 2016 at least 10,000 unaccompanied refugee children had disappeared after arriving in Europe and warnings that pan-European gangs are targeting minors for sex abuse and slavery. See

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CDP-2016-0088> [accessed: 22 August 2016]

<sup>69</sup> Relates to second cycle recommendation 7 (enjoys the UK's support), 113 (enjoys the UK's support in part) and 115 (does not enjoy the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>70</sup> See EHRC (2016), 'Socio-economic rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of ICESCR', p.71. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 22 August 2016]

<sup>71</sup> EHRC (2015), 'Domain G: Productive and valued activities', pp. 90-2. Available at:

<http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/productive-and-valued-activities-domain> [accessed: 22 August 2016]

<sup>72</sup> Note that 'Disabled people' includes those with 'physical or mental health conditions or illnesses' lasting or expected to last 12 months and which limit day-to-day activities. ONS (2016), Annual Population Survey dataset on Nomis, January-December 2015. Available at:

<https://www.nomisweb.co.uk/articles/948.aspx> [Accessed: 8 June 2016]

- **UK Government should introduce interim targets and a statutory reporting requirement on its commitment to halve the disability employment gap.<sup>73</sup>**

35. The gender pay gap was 19.2% in 2015,<sup>74 75</sup> with progress slowing in recent years.<sup>76</sup> The ethnic pay gap was 5% and the disability pay gap 9% in 2013.<sup>77</sup> Low paid work<sup>78</sup> affects 21% of workers in Britain – the majority are women.<sup>79</sup> There are concerns about how the new National Living Wage, applicable to workers aged 25 and over, will affect women and those under-25 if there is a ‘race to the bottom’ on pay.<sup>80</sup>

### 36. Recommendation:

- **UK Government should produce regular estimates of the gaps in hourly pay, for full-time and part-time workers, disaggregated by gender, race and disability.**
- **UK and Scottish Governments should monitor the impact of the National Living Wage on women and young people.<sup>81</sup>**

## Privacy and security

37. The EHRC welcomes the UK Government’s reform of privacy and surveillance laws, which have struggled to keep pace with technological

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<sup>73</sup> Relates to second cycle recommendations 66 (enjoys the UK’s support) and 102 (does not enjoy the UK’s support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>74</sup> This takes into account the average hourly pay of both full-time and part-time workers. ONS (2015), Statistical bulletin: Annual Survey of Hours and Earnings: 2015 Provisional Results. Available at: <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2015provisionalresults> [accessed: 22 August 2016]

<sup>75</sup> There are specific public sector equality duties in Scotland to publish information on gender pay gaps every two years. The specific public sector equality duties in Wales also include requirements aimed at tackling gender pay differences. See Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Available at: <http://www.legislation.gov.uk/sdsi/2012/9780111016718/regulation/7>, and <https://www.equalityhumanrights.com/en/advice-and-guidance/guides-psed-wales> [accessed: 22 August 2016]

<sup>76</sup> EHRC (2015), ‘Domain G: Productive and valued activities’, pp. 90-2. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/productive-and-valued-activities-domain> [accessed: 22 August 2016]

<sup>77</sup> EHRC (2015), Data tables, Productive and values activities domain, EG2.2 GB,E,S,W LFS Pay gap in median hourly earnings of employees. Available at: [http://ehrc2oszpjdznc.devcloud.acquia-sites.com/sites/default/files/eg2.2\\_esw\\_pay\\_gap\\_lfs.xls](http://ehrc2oszpjdznc.devcloud.acquia-sites.com/sites/default/files/eg2.2_esw_pay_gap_lfs.xls) [accessed: 22 August 2016]

<sup>78</sup> Low paid work referred to here is work where pay is below two-thirds median hourly pay in April 2013.

<sup>79</sup> Resolution Foundation (2015), ‘Low Pay Britain 2015’, p. 5. Available at: <http://www.resolutionfoundation.org/publications/low-pay-britain-2015/> [accessed: 21 April 2016]

<sup>80</sup> See EHRC (2016), ‘Socio-economic rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK’s implementation of ICESCR’. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> [accessed: 22 August 2016]

<sup>81</sup> Relates to second cycle recommendations 52, 62, 63, 64 and 65 (enjoys the UK’s support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

advances and the need to protect the public while respecting individuals' rights.<sup>82</sup>

**38. Recommendation: UK Government should ensure the new privacy and surveillance framework:**

- Improves protection of privacy rights through clearly defined and limited powers.
- Has improved oversight and accountability measures.
- Keeps pace with modern technology.<sup>83</sup>

## Detention and asylum

39. The EHRC is concerned by increases in self-harm and suicide in prisons in England and Wales<sup>84</sup> and the impact of prison staff retention problems on prison safety.<sup>85</sup> The Chief Inspectors of Prisons for England and Wales, and for Scotland, have reported that overcrowding continues to pose a significant problem, (though Scotland's prison population is dropping).<sup>86</sup>

**40. Recommendation: UK and Scottish Governments should:**

- Produce action plans to improve prisoner safety.<sup>87</sup>

41. Guidelines for England and Wales state that restraint should only be used against children and young people in the youth justice secure estate as a last resort, but these are not consistently followed in practice<sup>88</sup> - usage is at a five-year high,<sup>89</sup> with troubling injury levels.<sup>90</sup> One in three children in the youth

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<sup>82</sup> EHRC, (2015), 'Civil and Political Rights in the UK: Equality and Human Rights Commission Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights'. Available at:

<https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-civil-and> [accessed: 22 August 2016]

<sup>83</sup> Relates to second cycle recommendations 119, 120, 121 and 124 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>84</sup> In the 12 months to March 2016, there were 100 apparent self-inflicted deaths in prisons in England and Wales (up 27% from the previous 12 month period). In the 12 months to December 2015, reported incidents of self-harm were up 25%. See <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2015> [accessed: 22 August 2016]

<sup>85</sup> See <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news-parliament-20151/prison-safety-report-published-15-16/> [accessed: 22 August 2016]

<sup>86</sup> EHRC (2015), 'Is Britain fairer? The state of equality and human rights 2015', p. 78. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/great-britain-report> [accessed: 22 August 2016]

<sup>87</sup> Relates to second cycle recommendations 85, 86 and 87 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed 24: August 2016]

<sup>88</sup> See <http://www.publications.parliament.uk/pa/it201415/jtselect/jtrights/144/14403.htm> [accessed: 22 August 2016]

<sup>89</sup> Ministry of Justice and Youth Justice Board (2015), 'Youth justice annual statistics 2013-14', p. 49, Chart 8.2B. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/399379/youth-justice-annual-stats-13-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf) [accessed: 22 August 2016]

<sup>90</sup> The use of restraint which caused injuries to children in 2013/14 was 448% higher than previously reported by the Ministry of Justice. See Ministry of Justice and Youth Justice Board (2015), 'Youth

justice secure estate in England is subject to solitary confinement, with certain groups at increased risk.<sup>91</sup> The Scottish Government does not record the use of restraint or solitary confinement within its youth justice secure estate.

#### **42. Recommendation:**

- **UK Government should ensure that in the youth justice system:**
  - **Restraint is only used:**
    - **As a last resort and proportionate response to an imminent threat of injury.**
    - **Safely and not deliberately to inflict pain.**
  - **Solitary confinement is prohibited.**
- **The Scottish Government should collect data on the use of restraint and solitary confinement in its youth justice secure estate.<sup>92</sup>**

43. The EHRC welcomes the UK Government's commitment to reduce the number of people who are detained in police cells under the Mental Health Act 1983 (MHA).<sup>93</sup> The figure is falling, but was at 6,028 in 2013/14.<sup>94</sup>

#### **44. Recommendation: UK Government should:**

- **Continue to reduce the number of adults detained in police cells under mental health legislation.<sup>95</sup>**

45. Following an independent review of the welfare of immigration detainees,<sup>96</sup> the UK Government agreed to reform the system. It passed the Immigration Act 2016, however, without introducing a statutory time limit on detention. The UK is the only country in Europe without a statutory limit<sup>97</sup> and some vulnerable persons, such as pregnant women, continue to be detained.<sup>98</sup>

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justice annual statistics: 2013 to 2014'. Available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2013-to-2014> and <http://qna.files.parliament.uk/qna-attachments/446043/original/23231%20Table.xls> [accessed: 22 August 2016]

<sup>91</sup> Including Black and mixed heritage children, children with a recorded disability, looked after children and children assessed as a suicide risk. See Office of the Children's Commissioner for England (2015), 'Unlocking Potential: A study of the isolation of children in custody in England', p.2. Available at: <https://www.childrenscommissioner.gov.uk/publications/unlocking-potential> [accessed: 22 August 2016]

<sup>92</sup> Relates to second cycle recommendations 87 (enjoys the UK's support) and 94 (does not enjoy the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>93</sup> See <https://www.gov.uk/government/speeches/home-secretarys-police-federation-2015-speech> [accessed: 22 August 2016]

<sup>94</sup> Health and Social Care Information Centre (2014), Inpatients Formally Detained in Hospitals Under the Mental Health Act 1983 and Patients Subject to Supervised Community Treatment, England - 2013-2014, Annual figures. Available at: <http://www.hscic.gov.uk/catalogue/PUB15812> [accessed: 22 August 2016]

<sup>95</sup> This was not raised at the UK's second cycle UPR, though is an issue which pre-dates 2012.

<sup>96</sup> Shaw, S. (2016), 'Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office'. Available at: <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons> [accessed: 2 February 2016]

<sup>97</sup> James Brokenshire, Minister of State for Immigration, Home Office, Hansard, 14 January 2016. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470/> [accessed: 2 February 2016]

<sup>98</sup> EHRC (2016), 'Torture in the UK: Submission to the UN Committee Against Torture 57th session on the sixth periodic report of the UK on compliance with the UN Convention Against Torture and

**46. Recommendation: UK Government should:**

- **Use immigration detention as a last resort.**
- **Cease the detention of vulnerable persons, such as pregnant women.**
- **Set a statutory time limit of 28 days for immigration detention.<sup>99</sup>**

47. The UK Government may have reneged on its commitment to end the practice of unnecessarily detaining children for immigration purposes.<sup>100</sup> The EHRC is concerned that age assessments of young asylum seekers continue to be carried out on a subjective basis by immigration officers.<sup>101</sup>

**48. Recommendation: UK Government should:**

- **Cease the immigration detention of children, and ensure children seeking refugee status receive appropriate protection.**
- **Introduce a presumption that, where a young asylum seeker's age is uncertain, they must be treated as a child until their age has been assessed objectively by an independent expert.<sup>102</sup>**

## Stop and search

49. The EHRC welcomes recent initiatives from the Home Office to improve use of stop and search powers in England and Wales.<sup>103</sup> Recent data shows a reduction in the use of these powers under the Police and Criminal Evidence

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Other Cruel, Inhuman or Degrading Treatment or Punishment'. Available at: [https://www.equalityhumanrights.com/sites/default/files/torture\\_in\\_the\\_uk\\_1.pdf](https://www.equalityhumanrights.com/sites/default/files/torture_in_the_uk_1.pdf) [accessed: 22 August 2016]

<sup>99</sup> Relates to second cycle recommendations 88 (enjoys the UK's support), 111, 112, 113, 114 (enjoys the UK's support in part) and 115 (does not enjoy the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>100</sup> Restrictions on the detention of children for immigration purposes have existed for some considerable time in the UK. These have now been expressed in primary legislation by way of the Immigration Act 2014 which amended the general powers of detention that are contained in the Immigration Act 1971 so as to limit their application to children. However, children continued to be unnecessarily detained in practice until 2010 when the Coalition Government committed to end the immigration detention of children. The Coalition Government commissioned the children's charity, Barnardo's, to run Cedars, the only pre-departure accommodation in the UK designed to provide a secure facility which respects the privacy and independence of children and their families. The UK Government announced the closure of Cedars on 21 July 2016. See

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-07-21/HLWS114/> [accessed: 22 August 2016]. Children will now be detained in

a 'discrete unit' within Tinsley House Immigration Removal Centre. The EHRC considers this move to be a retrograde step that is especially disappointing given HMI Prisons found that Cedars delivers the best outcomes for detainees, notably children. See

<https://www.justiceinspectors.gov.uk/hmiprison/media/press-releases/2012/10/cedars-pre-departure-accommodation-an-exceptional-facility/> [accessed: 22 August 2016]

<sup>101</sup> See *R (AA) v Secretary of State for the Home Department* [2016]

<sup>102</sup> Relates to second cycle recommendations 7 (enjoys the UK's support), 17 and 115 (does not enjoy the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>103</sup> See EHRC (2016), 'Race rights in the UK: Submission to the UN Committee on the Elimination of Racial Discrimination in advance of the public examination of the UK's implementation of ICERD'. Available at: [https://www.equalityhumanrights.com/sites/default/files/race-rights-in-the-uk-july-2016\\_0.pdf](https://www.equalityhumanrights.com/sites/default/files/race-rights-in-the-uk-july-2016_0.pdf) [accessed: 22 August 2016]

Act 1984,<sup>104</sup> however, the EHRC is concerned that a Black person is five times more likely to be stopped and searched than a White person.<sup>105</sup>

**50. Recommendation: UK Government should:**

- **Ensure stop and search powers are used only on the basis of intelligence and are justified and lawful.**
- **Where there is evidence of disproportionate use of stop and search powers with ethnic minorities, ensure the relevant police service implements monitoring and training and scrutiny.<sup>106</sup>**

## **Accountability for human rights abuses committed by British military abroad**

51. In 2015, the UN Human Rights Committee questioned the UK Government over delays in investigating allegations of human rights abuses committed by the British military abroad.<sup>107</sup> The Detainee Inquiry into alleged complicity in acts of torture and ill-treatment of detainees overseas was passed to the UK Parliament's Intelligence and Security Committee, whose last substantive statement on this was in February 2015.<sup>108</sup> The Iraq Historical Allegations Team – which assesses allegations of abuse of Iraqi citizens by British service personnel – has addressed just 3.8% of its cases.<sup>109</sup>

**52. Recommendation: UK Government should expedite investigation of allegations of:**

- **British complicity in torture and cruel, inhuman or degrading treatment in Iraq.**
- **Complicity of British military personnel in the ill-treatment of detainees and civilians overseas.<sup>110</sup>**

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<sup>104</sup> Home Office (2015), Police powers and procedures England and Wales year ending 31 March 2015: data tables. Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2015> [accessed: 17 March 2016]

<sup>105</sup> Ibid.

<sup>106</sup> Relates to second cycle recommendations 54, 55, 57 (does not enjoy the UK's support), 56 and 58 (enjoys the UK's support in part). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>107</sup> UN Human Rights Committee, 'Concluding observations on the seventh periodic report of the United Kingdom, July 2015', para 9. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en) [accessed: 22 August 2016]

<sup>108</sup> Intelligence and Security Committee of Parliament. 2015. *News Archive, 11 February 2015*. [ONLINE] Available at: <http://isc.independent.gov.uk/news-archive/11february2015> [accessed: 3 February 2016]

<sup>109</sup> Ministry of Defence (2016), 'The Iraq Historic Allegations Team quarterly update: January to March 2016'. Available at: <https://www.gov.uk/government/publications/iraq-historic-allegations-team-quarterly-updates> [accessed: 23 August 2016]

<sup>110</sup> Relates to second cycle recommendations 33, 122 (does not enjoy the UK's support), 67, 68, 118 (enjoys the UK's support in part) 84 and 126 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

## Highest attainable standard of mental and physical health

53. There are significant disparities in access to, experience of, and outcomes from health services for some groups:

- Black and minority ethnic groups are more likely than average to be admitted to psychiatric hospitals.<sup>111</sup>
- Children and young people with mental health needs experience high referral thresholds and long waiting times.<sup>112</sup> Many receive no support, albeit with regional differences.<sup>113</sup>
- Gypsies and Travellers face barriers in accessing health services,<sup>114</sup> with evidence suggesting they are almost twice as likely to report poor health.<sup>115</sup>
- Transgender people encounter significant problems using general health and Gender Identity services, often due to a lack of understanding within services.<sup>116</sup>

**54. Recommendation: UK and devolved governments should ensure:**

- **The collection and maintenance of data on access to, experience of, and outcomes of health services, disaggregated by protected characteristics.**
- **Appropriate mitigation of inequalities.**
- **Mental health services funding meets local demands.**
- **Healthcare professionals implement guidance on providing effective care to groups with particular needs, and comply with the Human Rights Act.<sup>117</sup>**

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<sup>111</sup> CAAPC (2016), 'Old Problems, New Solutions: Improving Acute Psychiatric Care for Adults in England'. Available at: <http://www.caapc.info/#/publications/cgbd> [accessed: 23 August 2016]

<sup>112</sup> EHRC (2015), 'Is Britain Fairer? The state of equality and human rights 2015', p. 52. Available at: <https://www.equalityhumanrights.com/en/britain-fairer/britain-fairer-report> [accessed: 23 August 2016]

<sup>113</sup> The Scottish Government reduced the maximum waiting time target for children and adolescents from 26 weeks to 18 weeks in December 2014, which is beginning to show some improvement. See EHRC (2016), 'Is Scotland Fairer? The state of equality and human rights 2015', p. 55. Available at <https://www.equalityhumanrights.com/en/britain-fairer/scotland-fairer-introduction/scotland-fairer-report> [accessed: 23 August 2016]

The Welsh Government announced new investment in Children and Adolescent Mental Health Services in 2015, though it is too early to assess whether this will increase access to provision. See EHRC (2015), 'Is Wales Fairer? The state of equality and human rights 2015', p. 21. Available at: <https://www.equalityhumanrights.com/en/wales-fairer> [accessed: 23 August 2016]

<sup>114</sup> RCGP (2013), 'Improving access to health care for Gypsies and Travellers, homeless people and sex workers', p. 21. Available at: <http://www.rcgp.org.uk/common-elements/rss/~/-/media/Files/Policy/A-Z-policy/RCGP-Social-Inclusion-Commissioning-Guide.ashx> [accessed: 23 August 2016]

<sup>115</sup> In 2011, 30% of Gypsies and Irish Travellers in England and Wales reported 'not good' health, compared to 19% in the population as a whole. See [http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776\\_3\\_18773.pdf](http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776_3_18773.pdf) [accessed: 23 August 2016]. In Scotland, 32% of Gypsy/Travellers reported 'not good' health, compared with 18% overall. See <http://www.gov.scot/Resource/0046/00460679.pdf> [accessed: 23 August 2016]

<sup>116</sup> Women and Equalities Committee (2016), 'Transgender Equality'. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2015/transgender-inquiry-report-published-15-16/> [accessed: 23 August 2016]

## Educational attainment

55. Educational attainment in Britain is improving, though children with special educational needs (SEN) in England and Wales or, in Scotland, additional support needs (ASN), Gypsy and Traveller children, children in the care of a local authority and those with socio-economic disadvantage continue to underperform against average levels.<sup>118</sup>
56. The rate of school exclusions is generally falling, but pupils with SEN, those eligible for free school meals (FSM) and Gypsy/Roma and Traveller pupils are more likely to be excluded on a permanent or fixed-term basis. For example, in England, Gypsy and Traveller pupils had the highest rates of any group.<sup>119</sup> In Wales, the rate for pupils eligible for FSM was up to four times higher than those not eligible,<sup>120</sup> as it was for pupils with ASN in Scotland<sup>121</sup> compared to those without.<sup>122</sup>

### 57. Recommendation:

- **UK and devolved governments should take action to close educational attainment gaps of Gypsy and Traveller children, those on free school meals, 'looked after' children, and those with special educational needs or additional support needs.**
- **UK and Scottish Governments should provide clear guidance<sup>123</sup> to schools that the disciplinary measure of both permanent and temporary school exclusions must only be used as a 'last resort'.<sup>124</sup>**

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<sup>117</sup> Relates to second cycle recommendations 102 (does not enjoy the UK's support) and 103 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed 24: August 2016]

<sup>118</sup> For example, in 2014/15, only 36.7% of disadvantaged pupils in England (those eligible for free school meals (FSM) at any point in the last six years or those who are looked after by the local authority) achieved five A\*-C GCSEs including English and Maths, compared with 64.7% of all other children. See <https://www.gov.uk/government/statistics/revise-gcse-and-equivalent-results-in-england-2014-to-2015> [accessed: 23 August 2016]. In Wales, in 2014/15 only 23.3% of those with SEN achieved the level 2 threshold including a GCSE grade A\*-C in English or Welsh First Language and Mathematics, compared to 58.9% of all pupils, and just 13% of Gypsy/Roma children in Wales in 2013/14 achieved this grade, compared with 53% of all pupils. See EHRC (2015), 'Is Wales Fairer? The state of equality and human rights 2015'. Available at <https://www.equalityhumanrights.com/en/wales-fairer> [accessed: 23 August 2016]. In Scotland in 2014/15, 35% of looked after school leavers achieved one or more qualifications at SCQF level five or better, compared to 85% of all school leavers. See <http://www.gov.scot/Resource/0050/00501939.pdf> [accessed: 23 August 2016]

<sup>119</sup> As the population of Traveller or Irish Heritage pupils is relatively small these figures should be treated with some caution. See <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-2014-to-2015> [accessed: 23 August 2016]

<sup>120</sup> In both primary and secondary schools. See <http://gov.wales/statistics-and-research/permanent-fixed-term-exclusions-from-schools/?lang=en> [accessed: 23 August 2016]

<sup>121</sup> A National Improvement Framework was introduced in Scotland in 2016, which is designed to close the attainment gap and will see new standardised assessments give detailed information to teachers on children's education needs.

<sup>122</sup> Scottish Government (2015), 'Summary statistics for schools in Scotland'. Available at: <http://www.gov.scot/Publications/2015/12/7925/downloads> [accessed: 23 August 2016]

<sup>123</sup> The Welsh Government has guidance on the parameters for the exclusion of pupils, including that it should only be used as a last resort. See <http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/exclusion/?lang=en> [accessed: 23 August 2016]

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<sup>124</sup> Relates to second cycle recommendations 66 (enjoys the UK's support in part) and 106 (enjoys the UK's support). See Annex 1, UPR Recommendations to the UK. September 2012. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]