

BIHR Explainer: JCHR Report on The Government's response to COVID-19: human rights implications

Today the Joint Committee on Human Rights (JCHR) has published their report, [The Government's response to COVID-19: human rights implications](#). The report says that the Government must urgently address a number of issues to make sure that its handling of the Coronavirus pandemic is compatible with human rights.

What is the Joint Committee on Human Rights?

The Joint Committee on Human Rights consists of twelve members, appointed from both the House of Commons and the House of Lords. Their role is to examine matters relating to human rights within the United Kingdom. The JCHR has been conducting an inquiry into the human rights implications of the Government's response to Covid-19. After hearing evidence and taking submissions, [including evidence from BIHR](#), the Committee published this report of findings and recommendations.

Why did the inquiry take place?

The Coronavirus Act was passed by Parliament on 25 March, after 3 days of review (this is a very short period compared to usual times). Since then there have been many changes to law and policy which have been put in place by the UK (and devolved) governments. Some of the changes have been approved by Parliament, such as the Coronavirus Act, using very short scrutiny processes. However, many changes have not been subject to Parliament's review, instead being issued by the Government as delegated laws. Delegated (or secondary laws) are laws created by ministers (or other bodies) under powers given to them by an Act of Parliament. Many of these changes have impacted the human rights of different groups of people. You can read our explainers on the changes to law and policy [here](#).

In March, just before the Coronavirus Act was passed, the JCHR announced that it would be looking at the Government's Covid-19 response and issued a call for evidence on this topic.

BIHR submitted three reports of our research findings on the impact of the Government's response to the Covid-19 for people with care and support needs to the JCHR inquiry. This research, conducted with 230 people across England, Scotland and Wales, draws on the experiences of people accessing (or trying to access) services, their families and those that care about them, advocates, campaigners and community groups, as well as staff from health, care, social work, education and housing. You can read the reports (with Easy Read versions) [here](#).

What issues does JCHR report look at?

The JCHR [stated](#) it would look at "any legislation that the Government brings forward to contain and control the Covid-19 outbreak, as well as how those measures are then

implemented, and how the response could be differently affecting certain groups of people”.

The JCHR explains that “this report seeks to inform the six-month review of the Coronavirus legislation required by the Coronavirus Act 2020 along with any future response to a “second wave” of the virus later this year”.

What does the report say about the human rights implications of the Government’s response to Covid-19?

The report looks at how the Government’s response to Covid-19 has impacted human rights in a number of areas by focusing on the following themes and rights:

Human rights impact of the lockdown

The “lockdown” began in the UK on 23 March 2020. Across the UK, different regulations are in place which are legal rules about when you can leave your house. You can read our Explainers on lockdown regulations across the UK [here](#).

The report states that the lockdown regulations have had a huge impact on the rights of millions of people across the country. The report notes that the following rights have been impacted:

- [Right to private and family life \(Article 8\)](#)
- [Freedom of thought, conscience and religion \(Article 9\)](#)
- [Freedom of expression \(Article 10\)](#)
- [Freedom of assembly and association \(Article 11\)](#)

The report also raises concerns around the ambiguity and mixed messaging surrounding the lockdown regulations, which may impact the [right not to be punished for something which wasn't against the law when you did it \(article 7\)](#). The report also highlights some concerns around policing and prosecution issues and use of Fixed Penalty Notices.

The right to life and the right to health which has been (partially) incorporated within the positive obligation to secure the right to life

The report looks at the right to life, which has been a key concern during the Covid-19 pandemic. The state, and those with a legal duty under the [Human Rights Act](#), must take appropriate steps to safeguard the lives of those who live in that state. The report also looks at the right to health, although it is not strictly a right under the Human Rights Act, as according to the report it has been (partially) incorporated within the positive obligation to secure the right to life.

The report looks at a number of issues where the right to life may be impacted including the allocation and prioritisation of personal protective equipment (PPE) and blanket use of Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) notices in care homes.

The report highlights concerns around the Care Act Easements, you can read our Explainer on the Care Act Easements [here](#). The report refers to [BIHR research](#) which found that

among those working in health and care, 76% of respondents said that during Covid-19 they were not provided with legal training or clear information about upholding human rights law.

The report also notes that the committee received evidence that local social care provision has significantly reduced, including in areas where the easement provisions have not been used. Again referring to the [BIHR research](#), the 68% of respondents said that their care and support (or that of their loved one) had got worse during Covid-19. This has implications for human rights including the right to life (Article 2), the right to respect for private and family life (Article 8) and the right to freedom from inhuman and degrading treatment (Article 3).

The rights impacted:

- [The right to life \(Article 2\)](#)

Issues in relation to detention settings

The report finds that the human rights of a number of groups that are in detention settings: people held in prison and young offenders' institutions, those held in immigration detention settings, and young people with autism and/or learning difficulties who are detained in assessment and treatment units or other settings.

The report highlights a number of concerns, including the risks that the measures taken during lockdown and beyond have breached the right to family life of both those detained and of their loved ones.

The rights impacted are:

- [Right to liberty \(Article 5\)](#)
- [Right to private and family life \(Article 8\)](#)
- [Right to be free from inhuman and degrading treatment \(Article 3\)](#)
- [Right to life \(Article 2\)](#)

Contact tracing and privacy rights

The report looks at the privacy issues that may be impacted by a contact tracing app. The rights impacted are:

- [Right to private and family life \(Article 8\)](#)
- [Freedom from discrimination \(Article 14\)](#)

Access to justice

The report looks at how the right to a fair trial and the right to liberty have been engaged by measures taken by the Government with regards to access to justice and the operation of the Courts. Although the Committee welcomes the use of live link technology as a mechanism of avoiding delays to justice, it notes that there are issues to address around digital inequality.

The report also looks at right to life, in terms of cases where state actions may have contributed to a death, there are procedural obligations on the state to find out why someone has died as well as to learn any lessons to avoid unnecessary deaths in the future. The rights impacted are:

- [Right to fair trial \(Article 6\)](#)
- [Right to liberty \(Article 5\)](#)
- [Right to life: Article 2\)](#)

Children's rights and the right to education

The report notes that closure of schools engages the rights of the child including children's right to education. Closures will have had different impacts on different children. For example, school closures have particularly impacted the rights of those with Special Educational Needs and Disabilities (SEND). Rights impacted are:

- [Right to education \(Article 2 of Protocol 1\)](#)
- [Right to family life \(Article 8\)](#)

Scrutiny and review of emergency legislation

The report also looks at the scrutiny and review of emergency legislation. Noting that whilst the use of emergency procedures such as fast-tracked legislation and statutory instruments may be justified in the exceptional circumstance. However, the use of emergency procedures must be limited to what is absolutely necessary, which as the report notes is "especially the case when human rights are at stake".

What recommendations does the report make?

The report makes a number of recommendations including:

- In terms of the lockdown regulations, the report recommends that "it is important that there is clarity for the public in relation to any criminal laws, and particularly laws relating to the lockdown. Information must be accessible to disabled people, especially those with cognitive impairments".
- Regarding PPE, the report recommends that the Government must take steps to ensure that the allocation and prioritisation decisions and policies relating to the provision of PPE are evidence-based and non-discriminatory.
- The report recommends that absence of a national DNACPR policy has, in the context of the pandemic, led to systematic violation of the rights of patients under the right to life (Article 2) and the right to private and family life (Article 8). The report states that the systematic nature of this violation means that the Government may be under an obligation to implement a national policy.
- With regards to the Care Act Easements, the report states that Government must justify its reasoning for the continuation of the powers to trigger easements to social care provision, and they must only continue if absolutely necessary and proportionate. Further, the Government must ensure that local authorities and care providers are able to meet increased care and support needs during and resulting from the pandemic.

- The report notes that blanket visiting bans in prisons are incompatible with the right to family life (Article 8). Any restriction on visiting rights must be shown to be necessary and proportionate in each individual case.
- The report urges the Government to look into the effect that school closures have had on young people with SEND and to address any barriers to them returning to schools and accessing education. Where it is not in the best interests of the child to be in school, for example if they are shielding, appropriate support should be provided to them so that they can learn from home.
- The report also recommends the Government should immediately organise a quick, interim review into deaths from Coronavirus to ensure that key lessons are learned as soon as possible, and in advance of any second peak in the Autumn/Winter. This review should be swift, independent and must be published.

What happens now?

The JCHR stated that “this report seeks to inform the six-month review of the Coronavirus legislation required by the Coronavirus Act 2020 along with any future response to a “second wave” of the virus later this year”. The six-month review of the Coronavirus Act is due to take place at the end of September.

Where can I find more information?

- BIHR, Human Rights & Coronavirus Hub: [Explainers: Changes to Law and Policy](#)
- BIHR, News, [BIHR Reports published on the Impact of the Government's response to the Covid-19 for the human rights of people with care and support needs](#)
- BIHR, Human Rights & Coronavirus Hub: Briefings on Changes to the Law, [House of Commons Briefing: Coronavirus Bill 2020 and Selected Human Rights Implications. The risk of making vulnerable adults and children even more vulnerable](#)
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