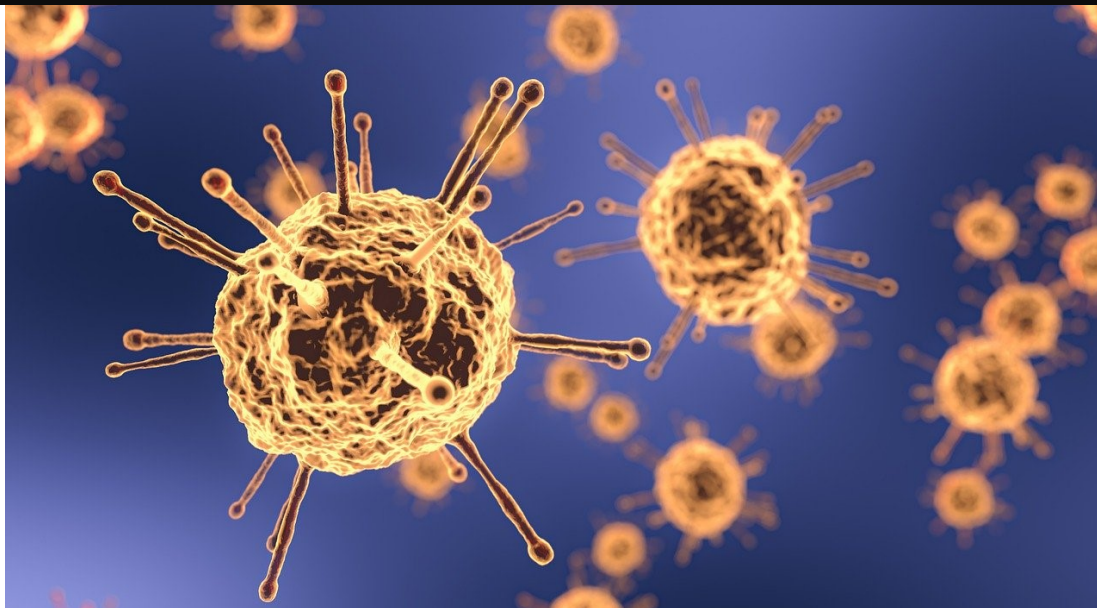


## SPECIAL EDITION ON THE COVID-19 CRISIS AND ITS IMPACT ON RIGHTS AND EQUALITY IN NORTHERN IRELAND



### BACK TO AN EMERGENCY? COVID-19 LEGISLATION IN NI

Daniel Holder, Deputy Director, CAJ

Northern Ireland is more than familiar with emergency legislation. We are a century on from the Special Powers Acts, notoriously looked upon jealously by apartheid South Africa, and the 21st century environment has seen the normalisation of a range of emergency-type powers.

Coronavirus presents a different type of emergency challenge. The positive human rights obligations of the state to urgently take all reasonable steps to save lives are paramount in such a public health emergency. This will necessitate proportionate restrictions on movement, assembly, and on other areas. The same principles apply though that emergency legislation must be proportionate, only be used for the purpose of containing the pandemic, be time-bound, non-discriminatory, and afford 'legal certainty', i.e. the rules need to be clear.

The new emergency legislation passed at Westminster that applied to NI was the Coronavirus Act 2020, introduced on 19 March 2020 and made law on 25 March 2020. Other emergency health regulations were in place in England in February, but did not apply to NI. Among other things, the Coronavirus Act brought into NI included wide powers for public health officers (but also police and immigration officers) to detain 'potentially infectious persons'

for health screening and assessment; and for the First and deputy First Ministers to restrict events and gatherings, and close premises.

The extension of powers in NI to immigration officers (against any person in any place) to detain 'potentially infectious persons' is concerning given the limited accountability, lack of medical training, and pre-existing concerns about arbitrary and discriminatory practices by such officers.

The primary NI emergency legislation is now the [Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#) passed on 28 March 2020 by the Health Minister Robin Swann MLA under existing public health law broadened by the Coronavirus Act. These Regulations, which have to be reviewed every 21 days, include restrictions on gatherings of more than two persons and powers to close premises (similar powers vested in the First and deputy First Ministers have therefore not actually been used). Regulation 6 restricts gatherings of more than two people in a public place with limited exceptions (including for essential work purposes, or when all the people live together).

#### **Regulation 5: When can you leave your home?**

The most publicly discussed regulation is Regulation 5 restricting 'freedom of movement' – i.e. the stay at home rule. You should not leave your home "without reasonable excuse". Twelve acceptable 'reasonable excuses' for leaving your

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home are listed in the regulations, but the list is not exhaustive and other unspecified 'reasonable excuses' can be made. The list includes leaving home to get food or medicine, for essential work, seeking medical assistance, to escape risk of harm (relevant to domestic abuse), to move children in shared care arrangements, and others.

One of the most contested 'reasonable excuses' listed is to leave your home "to take exercise either alone or with other members of their household". The regulations do not limit this to an hour or once a day and questions have, for example, arisen over whether persons can drive to a place to then take exercise. As the regulation itself does not elaborate the necessary 'legal certainty', this could be provided by policy guidance from the Department of Health (owners of the regulations), or by the PSNI (who are tasked with enforcing the regulations).

Initially, this issue appears to have been left to the PSNI to regulate. There were vague and contradictory signals - the PSNI often defers to UK policing guidance (which [recently specified](#) it was usually okay to drive a bit to then do exercise), yet on the same day this was publicised, the PSNI appeared to take a [different line](#), with a senior officer stating that "anyone travelling from home for exercise if they do not need to is in breach of lockdown restrictions", meaning no driving for exercise unless you could show you 'needed' to. The *News Letter* [reported](#) that the PSNI in Carrickfergus went even further by posting on Facebook: "Exercise begins and ends at your front door. By that I do not mean walking from your front door to your car to drive somewhere for exercise. This will not be tolerated...". In contradiction, however, the PSNI [advice](#) on its own website however is limited to 'encouraging' people not to drive to local beauty spots for their daily exercise.

The lack of legal certainty led to Executive discussion. On 24 April 2020, a statement was issued by The Executive Office (TEO) at the same time as a separate amendment was made to the regulations to allow persons to visit graveyards. TEO stated, "The Executive has also agreed to amend the Regulations to clarify the circumstances in which a person can leave the house to exercise, including reasonable travel to exercise. For example, a drive to a safe space or facility would be permitted. However, taking a long drive to get to a beach, or resort where numbers of people may gather is unlikely to be regarded as reasonable, even for exercise."

An amendment was then added stating that the regulations are still breached unless any 'associated travel' with exercise is reasonable. However, on 28 April 2020, the Department of Health and PSNI issued a [joint statement](#) which makes no reference to the amendment and only adds to the confusion. The wordy statement does not repeat the 'drive to exercise' example set out a week earlier by the TEO, but instead emphasises officer discretion, that officers will apply a 'reasonableness test' and that individual answers for 'countless hypothetical scenarios' cannot be given. In essence, it seeks to shift blame away from the authorities on to those seeking legal



certainty, finishing as it does by expressing deep concern that such discourse "may service to undermine public confidence in the overall regulations".

The problem that Regulation 5 is meant to tackle is too many people gathering at popular spots for exercise, hence undermining social distancing and increasing contagion. Whilst the interpretation of the rules is at times going to be contextual, it always needs to be done in a manner that provides clarity and consistency as to what the rules are. Though the policing response in general to the regulations has not been heavy handed, nobody is helped by a lack of clarity. A further problem for policing rests in the vagueness of the enforcement provisions in the legislation, which provide no real clarity in relation to how to ascertain a person is in breach of the 'stay at home' regulations.

At the time of writing, four amendment regulations have now been tabled to the health regulations. The latter amendments have reflected the first steps towards the NI Executives five stage recovery plan out of lockdown, allowing for example outdoor gatherings of up to six people.

### Emergency law: not just restrictions on the citizen

Most of the above emergency provisions relate to restrictions on citizens. The other side of the coin are emergency duties that could be placed on public authorities, for example to ensure NHS staff have protective equipment. There could also be duties on the private sector to, for example, switch production to essential items and not profiteer from the emergency (as has been the case with wartime emergency laws). The Assembly has passed some positive action legislation through other regulations - e.g. the Health Minister made all NHS treatment for Coronavirus free (including for non-NI residents), and the Communities Minister brought in a new Discretionary Support Grant for living expenses due to Coronavirus. She also pushed through regulations to limit evictions to prevent homelessness during crisis – extending notice to quit from one to three months.

Moving forward, more positive action will be needed to counter the brunt of the virus hitting those already facing long standing poverty and inequalities. For further information on the Coronavirus Act 2020, see CAJ's briefing paper, available here: <https://bit.ly/3aej5HL>.

## COVID-19 LEGISLATION AND REGULATIONS – A SOUTHERN PERSPECTIVE

Liam Herrick, Executive Director, ICCL

Since the outset of the pandemic, the Irish Council for Civil Liberties (ICCL) has been closely monitoring and seeking to shape the legal response taken by the Irish government to ensure the greatest possible protection of human rights during the pandemic.

The legal foundation for the government's response was the creation of broad ministerial powers under the Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020, rushed through the Oireachtas on 19-20 March 2020. This Act amended provisions of the Health Act 1947 in relation to the power of the Minister to prohibit events, and control movement within and in and out of the State (thus far only internally movement has been regulated). The Act also created a special power to detain contagious persons.

ICCL intervened before the Bill was published to set out some general human rights principles which should inform any legislation in this area. When the Bill was published on 18 March, we submitted comprehensive amendments to all members of the Oireachtas. Crucially, the first draft of the law would have given the government power to determine how long that emergency lasted by giving the Ministers for Health and Public Expenditure the power to extend the period. ICCL successfully called for a sunset clause to be included, whereby any extension would need Oireachtas approval and the Act will expire on 9 November 2020.

Given the haste with which the legislation was pushed through the Oireachtas, it is somewhat surprising that the government then refrained from introducing any regulations for over two weeks. The Garda mounted a major community policing operation over the weekend of 27-29 March based on advice and guidance to the public about a set of public health advice issued on 27 March, but with no powers of enforcement.

Regulations eventually came on 7 April with Garda powers of arrest, and sanctions up to imprisonment – but initially with a duration of only five days to cover the Easter Bank Holiday. The regulations grant the gardaí extraordinary powers to enforce specific public health measures, and contain a non-exhaustive list of reasonable excuses for which people can leave their place of residence.

ICCL called for a review of the use of those regulations before any further regulations were issued, but unfortunately for each subsequent update to the public health advice, issued on 11 April to last until 5 May, and issued on 1 May to last until 18 May respectively, the government simply rolled over the regulations and Garda powers with no review or consultation. Ultimately this approach has had the effect of extending a five day Garda operation into one lasting nearly six weeks.

The Garda Commissioner has recognised the extraordinary nature of the policing situation and has consistently expressed his commitment to using the powers sparingly. He has also

issued weekly statistics which show a low level of arrests under the public health regulations. The Policing Authority is also closely monitoring the use of powers and has issued a number of reports on the operations.



**Irish Council for  
Civil Liberties**

At the same time, ICCL has received a significant number of calls from members of the public about the overzealous application of the regulations, as well as on other issues such as the presence of armed Gardaí at checkpoints. The introduction of spit hoods gives rise to particular concern. In late April, following disparity in the Garda response to different protests, we called for physically distant protest to be categorised as a reasonable excuse to leave home.

Since 13 May, we have called on the Minister for Health to introduce a full return to policing by consent by ending the extraordinary powers under the regulations given the high level of compliance with the public health measures. As the country gradually opens up, we believe the task of the Garda in interpreting increasingly complicated protocols on who is entitled to move and work will become impossible.

A further area of concern is the threat of surveillance measures in the form of a tracing app promised by the Department of Health. So far ICCL and a coalition of privacy experts have succeeded in persuading the authorities to abandon the UK model of a centralised app to a de-centralised one, and we have also secured some commitment on transparency around the code and Data Protection Impact Assessment. We are not convinced the app will have any material benefit and the pilot phase has been repeatedly deferred.

The pandemic has also given rise to serious equality concerns. Along with civil society colleagues, ICCL has written to the Taoiseach saying that it is imperative that a Human Rights Impact Assessment be carried out now to identify if certain groups are being disproportionately impacted by the virus or by the restrictions. Some of those groups include Travellers, Roma, asylum seekers, homeless families, people suffering from mental illness, children with disabilities, and victims of domestic violence.

In a very welcome move, last week the Oireachtas established the Special Committee on Covid-19 Response, which should greatly strengthen accountability. Ahead of its first meeting, we wrote to all 19 Committee members urging them to (i) call on the Government to demonstrate how it is taking into account its human rights and equality obligations in shaping its response to Covid-19; and (ii) conduct pre-legislative scrutiny of any further regulations.

We hope that we will now begin to see an opening up of decision making and a prioritisation of rights to coincide with the opening up of the economy and society. Every step of the process is important and we will continue to fight for the removal of extraordinary powers at the earliest date.

More information about our work on Covid-19 is available from the ICCL website: <https://www.iccl.ie/human-rights/covid-19-emergency-legislation-everything-you-need-to-know/>



## CIVIL SOCIETY CALLS FOR RIGHTS AND EQUALITY TO BE PROTECTED DURING THE COVID-19 PANDEMIC

Robyn Scott, Communications and Equality Coalition Coordinator, CAJ

Northern Ireland has experienced a real and pressing public health emergency due to the Covid-19 pandemic. As a society, we have had to band together to limit the spread of the virus and protect each other from harm, ironically often by staying apart from our friends and loved ones. Though we may now be beginning to take our first steps towards emerging from the crisis, it will be some time before a return to relative normality becomes possible for any of us. Perhaps our society will never return to how it was before. This could prove to either be a good or bad thing depending on what happens next.

Both the UK and Irish governments have (inevitably) introduced emergency legislation in response to this crisis. Emergency legislation in times of crisis can be necessary and actively support positive action to protect human rights. While few would argue that such legislation was not necessary in response to covid-19, its application should nonetheless be carefully monitored. The general principle is that emergency measures should be necessary, proportionate, and time bound for the duration of the emergency, no longer remaining in effect when it is over. Time will tell whether this proves to be the case in this instance.

It has already become apparent that those existing at the margins of our society have disproportionately suffered serious illness and death from the virus, both within Northern Ireland and the rest of the UK. Meanwhile, the crisis has shown how easily our socio-economic rights can be picked apart in times of crisis and economic stress. The



absence of a Bill of Rights for NI (first promised over twenty years ago) has been more sorely felt than usual.

It is of crucial importance that civil society remains vigilant at this time and works together to ensure that there is no permanent 'roll-back' of human rights and equality due to Covid-19. As the crisis begins to lessen in intensity, we must work collectively to prevent it from repeating and strive to take action towards creating a fairer, more equal, and truly rights based society.

In April 2020, the 90 members of the Equality Coalition published a joint statement calling for political action to prevent the Covid-19 crisis from worsening inequalities in Northern Ireland. The statement urged the NI Executive and all public authorities to fully discharge their Section 75 obligations to ensure policies developed in response to the pandemic actively promote equality of opportunity and don't exacerbate inequalities. It is reproduced in full below.

The Equality Coalition, and its membership, will continue to promote equality and rights throughout this crisis. If your organisation is interested in joining the Coalition, please email [equalitycoalition@caj.org.uk](mailto:equalitycoalition@caj.org.uk). More information is also available from [www.equalitycoalition.net](http://www.equalitycoalition.net).

### JOINT STATEMENT BY THE EQUALITY COALITION ON COVID-19

The Equality Coalition is a broad alliance of 90 civil society organisations and trade unions in Northern Ireland that collectively campaign to promote equality. The Coalition is jointly convened by CAJ and UNISON. It provides a forum for unity between multiple sectors when campaigning for equality, while still allowing for the diversity of its members' work and views.

Collectively as Equality Coalition members we are seriously concerned by the impact that the Covid-19 pandemic will have on the groups protected by equality law (including the nine equality categories covered by Section 75 of the Northern Ireland Act 1998), as well as the impact the pandemic will have on exacerbating already unacceptable levels of economic inequality in our society.

As a Coalition, we call on the Northern Ireland Executive Departments and all public authorities, in developing necessary policy responses to Covid-19, to fully discharge their 'Section 75' obligations to ensure such policies actively promote equality of opportunity and don't exacerbate inequalities. In particular, the Coalition:



- Conscious of the right to life duties under the European Convention on Human Rights (ECHR) to take all reasonable steps to protect lives, calls on all relevant public authorities to ensure that all health and social care workers and other essential workers, regardless of whether they are employed in the public, private or community and voluntary sector, have access to the necessary Personal Protective Equipment (PPE) – including PPE equipment designed to fit women (who make up the majority of key workers). We call on the Northern Ireland Human Rights Commission (NIHRC) to closely monitor this issue because it is of such crucial importance both in terms of protecting workers' fundamental right to life and in limiting the spread of Covid-19 through our communities;
- Seeks that the NI Executive, in line with WHO international standards, immediately moves to implement a widespread programme of testing and contact tracing of Covid-19 cases to protect the health of all people, but particularly those Section 75 groups most vulnerable to Covid-19, including older people, persons with disabilities, ethnic minorities, and those who are pregnant;
- Calls on public authorities to ensure that those persons who must 'shield' in their own homes to protect themselves from Covid-19 (which will disproportionately affect older persons, persons with disabilities, and persons caring for those required to 'shield') receive all the help and support that they need to do so, including access to the Coronavirus Job Retention Scheme where they wish to avail of it;
- Recognises that emergency law measures are required and necessary to restrict contagion, and urges that such legislation is proportionate, regularly reviewed, and time bound to be in place only for as long as is needed. There is a need for legal certainty so that the rules are clear, and for safeguards to prevent powers being used in an arbitrary or discriminatory manner, or for collateral purposes unrelated to Covid-19;
- Conscious that emergency legislation should not be limited to restricting citizen behaviour, asserts that it should also include duties on public authorities designed to protect people (for example to ensure provision of PPE equipment); duties on private actors to assist in the production of essential items; and/or measures preventing evictions or providing for social protection;
- Asks relevant public authorities to ensure that all reasonable steps are taken to counter violence against women and broader domestic abuse against vulnerable groups due to the heightened risk resulting from Covid-19 restrictions;
- Recognising the considerable number of essential workers, in health and elsewhere, who are migrant workers, calls on the Home Office to drop its 'hostile environment' and No Recourse to Public Funds (NRPF) policies; and asks public authorities to ensure that all Covid-19 social protection measures are open to all regardless of immigration status;
- Urges steps to be taken to ensure the ongoing provision of essential public services during the pandemic, including reproductive health care services and essential childcare provision;
- Conscious that the most vulnerable groups bore the brunt of the austerity invoked following banking bailout, calls on the UK government and NI Executive to take all steps possible to ensure this is not repeated in the aftermath of Covid-19. Public authorities must ensure that the equality duties form the basis for all policy initiatives that they develop to rebuild our society. In particular, the long term running down and starving of investment of the health and social care system should be reversed to ensure it is better prepared for any future surges.

A current list of Equality Coalition members is available from the Equality Coalition [website](#).

# THE IMPACT OF COVID-19 ON WOMEN

Rachel Powell, Women's Sector Lobbyist, WRDA



It is clear from a global perspective that Covid-19 is having an extremely negative impact on women's safety, employment, human rights, health, finances, and more. The ongoing pandemic has created an unprecedented challenge across society in Northern Ireland. It has put in sharp focus the value and importance of care work, paid and unpaid, and highlighted the essential nature of often precarious and almost always low paid retail work. Women undertake the majority of this work and this crisis has further highlighted the gender-segregated nature of the workforce in Northern Ireland, as women constitute over 70% of health and social care staff, 70% of workers ineligible for Statutory Sick Pay, and 85% of part-time workers. Women will unfortunately bear the brunt of this crisis; economically, socially, and in terms of negative impacts on health and rights.

## IMMEDIATE ACTION

- Develop an inter-departmental response to the sharp rise in domestic violence, being evidenced as result of the pandemic;
- Create Gender balanced Covid-19 taskforces and working groups, crucially with representation from women's sector groups to ensure a gender lens to all actions;
- Protect the working rights of women in low-paid and precarious work on the frontline;
- Order personal protective equipment (PPE) that adequately fits and thus helps better protect women in caring and frontline roles;
- Ensure ongoing access to sexual and reproductive health services for women, including immediate access to contraception and abortion;
- Introduce telemedicine for abortion services to prevent women having to unnecessarily travel and implement the full abortion provision that was due on 31 March 2020;
- Provide access to support services and safe shelter for particularly vulnerable groups including homeless women, women with insecure immigration status and sex workers, in line with provision in England, Scotland and Wales;
- Ensure adequate childcare provision for all key workers;
- Increase support for those with caring responsibilities, including access to appropriate advice and where required to adequate personal protective equipment (PPE);
- Provide significant support for low-income families through reforms to universal credit.

These are just some of the rights-based issues that the Women's Policy Group has raised with MLAs, Ministers, MPs and relevant Committees. The WPG drafted a particularly detailed submission in response to an inquiry launched by the UK Parliament's Women and Equalities Committee on 'Coronavirus (COVID-19) and the impact on people with protected characteristics', which is available [here](#). More information about the group's general work can be found via this link: [www.wrda.net/lobbying/womens-policy-group](http://www.wrda.net/lobbying/womens-policy-group).

The WPG will continue lobbying for a feminist recovery plan based on our recommendations above alongside examples of rights-based international examples of best practice. The past decade of austerity across the UK had an extremely detrimental impact on the economic and social rights of women. It is essential that strategies to address existing inequalities in NI are not deprioritised in any temporary Programme for Government that deals with crisis response and recovery. You can keep up-to-date on these issues by [subscribing](#) to the Covid-19 newsletters from the WRC and WRDA.

The current crisis affects men and women differently, and in many cases, deepens the inequalities and rights deficit women already experience on an everyday basis. This developing crisis has highlighted the need for urgent government emergency action in both the immediate and longer term. The Women's Policy Group Northern Ireland (WPG) has been lobbying extensively on this, through creating briefings, articles and evidence submissions to government on the disproportionate impact Covid-19 is having on women and what government action is needed to address these issues.

The WPG is calling on decision-makers across Northern Ireland, and Westminster where relevant, to take action to ensure a gender-sensitive crisis response:

## FURTHER ACTION

- Provide government guidelines for the rights and protection of pregnant workers;
- Protect Black and Minority Ethnic and migrant workers from racial profiling by immigration officers;
- Create provisions to support the perinatal mental health of women facing drastically changing birthing plans;
- Allocate emergency relief funding for domestic violence and sexual health charities in Northern Ireland in line with additional support provided in England, Wales and Scotland;
- Guarantee that disabled women have the same level of healthcare as able-bodied individuals;
- Provide adequate access to essential hormonal healthcare and other services for trans individuals;
- Urgently address the impact the crisis is having on care homes, through measures to protect the elderly and majority migrant and women workforces;
- Urgently provide clarity on the absence of childcare in the Executive Coronavirus: Approach to Decision-Making Road Map;
- Collaborate with the women's sector to ensure gender-responsive recovery planning that focuses on economic and social rights.



## CHILDREN, YOUNG PEOPLE, AND THE COVID-19 PANDEMIC

Trása Canavan, Policy and Research Officer,  
Barnardo's Northern Ireland

The Covid-19 emergency has presented a challenge like no other in Barnardo's 154 year history; the children and families we support need us now more than ever.

The coronavirus pandemic has had an enormous impact on our society, affecting how we lead our everyday lives. However, whilst putting systems in place to address the threat of coronavirus, safeguards that normally protect vulnerable children and young people could inadvertently be breached. Our [policy briefing](#) highlights how we need to ensure that those protections are preserved, even more so in times of crisis.

Our services across Northern Ireland are using creative methods to ensure sustained support to families, using digital technology to maintain contact with young people, providing pre-recorded resources for families to use at home, and adapting our residential homes to comply with social distancing and PPE requirements.

Our staff and volunteers are working tirelessly to ensure the most vulnerable children are getting the support they need and that they are getting it quickly - whether that is a delivery of groceries and essentials, a regular digital counselling session, or protected face-to-face interventions where necessary.

However, we are concerned that [child protection issues](#) are not being identified and referred to the appropriate agencies, due to the absence of the usual support systems such as schools and other face-to-face engagement. We know that there has been an increase in [domestic abuse calls](#) to police and helplines during lockdown; and too often, children and young people are [the hidden victims](#) of domestic abuse.

In addition, increased online traffic may pose an increased risk of digital dangers including grooming and sexual exploitation, demonstrating a need to promote online safety and to support parents and carers to navigate digital safety. More families are being pushed into crisis and the most vulnerable children are in the greatest danger as vital support systems diminish.

The lasting impact of this crisis may continue for years to come and it is vital that we can sustain the support needed for children and young people both during and after the pandemic. It is important to recognise that the impact of the crisis on the mental health and anxiety of young people may not be seen immediately and could potentially impact on their long term wellbeing. Social distancing measures can exacerbate feelings of loneliness and isolation, leading to chronic loneliness which can impact on long term mental and physical health.

We need to make sure that access to mental health support continues throughout this period, and that there is recognition



of the particular vulnerability of certain groups – for example, young carers, children in or leaving care, children with disabilities or complex needs, and newcomer and refugee families with limited family or social networks.

Barnardo's is also concerned that many families have been pulled into poverty as a result of losing their jobs, businesses or increased financial pressures during this time. Children are already at a higher risk of poverty than the general population; experiencing poverty can cause stress and worry for a child, which negatively impacts on their development.

The added dimension of 'digital poverty' is also a concern given the reliance on digital devices for children and young people to access educational resources, as well as maintain friendships throughout this period.

This crisis will impact every family differently; we need to make sure that the unique needs of every child are recognised so that vulnerable children and young people are not forgotten during this crucial time.

### ABOUT BARNARDO'S

Barnardo's NI is the largest children's charity in Northern Ireland, working for more than 150 years to support children, young people, and families to achieve better outcomes.

These days, we deliver a wide range of services across Northern Ireland, from providing family support and early intervention, to working directly with children and families who have experienced adversity and need our support. We believe that every child deserves the best possible start in life.

For updates, service information and access to resources, follow us on Twitter [@BarnardosNI](#) and like us on Facebook ['Barnardo's Northern Ireland'](#).



## ACCESS TO HEALTHCARE FOR MIGRANTS DURING THE PANDEMIC

Úna Boyd, Immigration Project Coordinator, CAJ

The Covid-19 crisis has exposed inequalities across our society. Far from being the 'great equaliser', the pandemic has shown that the most vulnerable in our society continue to suffer disproportionately and that existing government policies and practices create and imbed this inequality. This has been particularly evident for migrant communities where we see the UK government's hostile environment clash with the campaign for public health and safety.

The hostile environment is an intentional policy of the UK government designed to imbed immigration controls into every element of daily life, from renting a house, to opening a bank account, to attending hospital. This policy was created with the claimed objective of targeting people living in the UK without status, but, in reality, the hostile environment affects all migrants by creating a culture of racism and discrimination. From the outset of the Covid-19 pandemic, it was evident that the hostile environment would prevent migrant communities accessing essential services and supports, with negative impacts on public health and safety for all. CAJ's Immigration Project has taken urgent action on several coronavirus related issues impacting the migrant community, as part of our ongoing work in combatting the hostile environment in Northern Ireland. One of the most important of these issues has been ensuring access to healthcare, without fear.

The hostile environment policy introduced immigration checks, charging for healthcare, and data sharing between the Home Office and the NHS. In England, a 2016 Memorandum allowed the Home Office to request confidential patient information for immigration enforcement purposes, including for minor immigration infractions. This Memorandum was halted in November 2018 following condemnation from a Health and Social Care Select Committee inquiry and legal action taken by Migrant Rights Network, represented by Liberty. However, a new Memorandum is in the process of being drafted. UK wide data sharing also occurs between the NHS and the Home Office regarding migrants who have incurred a debt to the NHS. There has been widespread condemnation of these practices from groups such as Liberty, the Joint Council for the Welfare of Immigrants, and Doctors of the World.

The core issue with these practices is that the fear of having information passed on to the Home Office prevents migrants from accessing healthcare. This includes some of the most vulnerable in society, such as pregnant women, victims of trafficking, and persons living with HIV. This issue is clearly even



more pertinent with the outbreak of Coronavirus in the UK. While the UK government confirmed there will be no charges made or immigration checks required for overseas visitors (including people who are undocumented) for the diagnosis or treatment of coronavirus, this is not enough to ensure migrants will seek treatment as they still fear being reported to the Home Office. By contrast, in the Republic of Ireland, the government confirmed that all people, documented or undocumented, can access health services in Ireland without their details being passed on the Department of Justice and Equality.

NI legislation does not embed hostile environment practices in the same manner that English legislation does. However, data sharing on NHS debt does apply to treatment received in Northern Ireland. It is crucial that all persons in Northern Ireland, including migrants living here without immigration status feel safe contacting health services to report Coronavirus symptoms, and it is not enough to remove charging practices without also making it clear that no person's data will be shared with the Home Office. With healthcare a devolved competence, it was clear that it was within the power of the NI executive to take urgent action to address this issue. CAJ sought a statement from the NI Department of Health confirming they would not share migrant data for treatment accessed related to Coronavirus. This was received in the form of an answer to an assembly question for the Minister of Health (Robin Swann MLA), tabled by Gerry Carroll MLA of People Before Profit.

The Minister responded as follows: "Since 7th March 2020 treatment for Coronavirus Disease (COVID-19) has been exempt from charge to ensure that there is no financial barrier to visitors to Northern Ireland receiving treatment for Coronavirus Disease (COVID-19)...The Business Services Organisation compiles personal data of those who have accessed healthcare services in Northern Ireland and have outstanding debts... As treatment for Covid-19 in Northern Ireland is exempt from charge there will be no debt to be recovered." (AQW 3899/17-22)

This statement confirms that as there is no charge and therefore no debt for coronavirus related treatment, no migrants details will be passed on to the Home Office for these treatments. This will have a significant impact on migrant communities who now know they can report coronavirus symptoms and seek treatment without fear.



## EMERGENCIES LAW, NEW AUTHORITARIANISM, AND RESPONSES TO COVID-19

Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism



As worldwide restrictions, quarantines, and states of emergency have been put in place to respond to the health pandemic, it is critical that human rights advocates remain focused on the potential dangers to human rights protections and the rule of law that follow.

A time of crisis is a difficult context to argue for rights. People across the world, including in Northern Ireland, are rightly concerned about their health, and the risk to the most fundamental or rights – the right to life. When the risks seem absolute and momentous, it is hard to argue for nuance, balance, and proportionality. Nonetheless, those of us who have long experience of the kinds of profound and sustained human rights abuses that occur during states of emergency are well-placed to offer sanguine advice in the context of this crisis. It is incumbent on us all to address obvious rights deficiencies and threats to the rule of law evident in governmental responses to the pandemic.

There is no contradiction in recognizing the severity of the current health crisis while reminding states that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory. International law allows states to take measures to respond to emergencies, including health emergencies. However, such responses should be narrowly tailored, be directly related to the health crisis (and not go beyond it), and aim to return states to normal functioning (and not for example be used to entrench the powers of a particular leader or particular political party).

Restrictions taken to respond to the virus must be motivated by legitimate public health goals and should not be used simply to quash dissent. All emergency powers should be proclaimed publicly - so that the general public knows what legal changes have been made - and states should notify to the relevant treaty bodies of the measures they have taken under international law. One very worrying trend to be seen is the lack of notification by states to international treaty bodies as well as non-use of derogation powers. The obvious point is that without knowing what a state is doing in response to the pandemic it is very hard to provide international oversight.

It is already obvious that the global scale of rights limitations is enormous. Extensive limitations on the right to free movement, assembly, expression, the practice of religious belief, and family life are being experienced across continents. To track the scale

and scope of the measures being taken by states my UN mandate has worked with two NGOs, ICNL and ECNL, to develop a global tracker on emergency powers. You can access this here: <https://www.icnl.org/covid19tracker/>.

I continue to be concerned that emergency declarations based on the Covid-19 outbreak will be used as a basis to target particular groups, minorities, or individuals. It states the obvious that Covid-19 should not function as a cover for repressive action under the guise of protecting health, nor should it be used to silence the work of human rights defenders. It is also clear that some states and security institutions may find the use of emergency powers attractive because it offers shortcuts. The cover of the pandemic may give some states the possibility of doing that which they would not otherwise be able to do. To prevent excessive powers becoming hardwired into legal and political systems, restrictions should be narrowly tailored, oversight has to be maintained, sunset clauses should be the norm, and the states have to be prepared to name and shame other states who abuse their powers under the guise of protecting health.

Covid-19 has exposed many weaknesses in our national and international protections of rights, not least the weaknesses in equal access to health, water, and housing, which are the immediate 'cures' for the pandemic. In parallel, the security focused responses of many states highlight the dangers of the unrestricted and untrammelled exercise of power in the shadows of the pandemic.

While we continue to seek a vaccine from the virus, healthy and democratic societies must take care to inoculate themselves from the parallel dangers of overreach, abuse of power, and rule of law degradation. Only by doing so can we both escape the worst harms of the virus as well as the contagion of governmental abuse that may accompany it.

Useful resources include the [call by the UN High Commissioner](#) for Human Rights to put Human Rights at the centre of Coronavirus Outbreak response.

You can also find further material from the UN on the human rights dimensions of the pandemic here: <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>.

Additionally, Rights and Security International have produced a 'Covid-19 Toolkit for Civil Society', available [here](#).

## WHAT ARE THE IMPLICATIONS OF A CONTACT TRACING APP FOR RIGHTS AND PRIVACY?

Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission (NIHRC)

In December 2016, Professor Joe Cannataci the UN Special Rapporteur for privacy in a digital age spoke at the launch of the Northern Ireland Human Rights Commission's annual statement in Belfast. He started by asking how many in the audience were in favour of electronically tagging and tracking the whole population aged 12 years and over. No one put their hands up. His second question was how many people own smart phones. Almost everyone's hands went up. Well, he pointed out, you can be tracked whether you like it or not, regardless of turning your phone on or off. In a nutshell, this sums up our contradictory approach to privacy. We value our privacy, yet rely too much on smart phones and other devices to think too deeply about it. Moreover, who has time to read the page after page of complex information about privacy put out by tech companies before ticking "Yes" and agreeing to hand over our personal data.

This issue is being thrown into sharp relief as both Britain and Northern Ireland are looking at a contact tracing app as one way of controlling the spread of coronavirus. In effect, an app is downloaded on a person's smartphone and will store the data of any other person's smartphone when it is within a defined proximity for a specific period of time. If a person tests positive for coronavirus, then the app notifies all the other contacts that they may themselves have been infected. This allows those people to be offered advice, for example to get tested or self-isolate. It can potentially minimize the spread of the virus.

A centralised app (NHSX) is being trialled in the Isle of Wight. As it happens, nine of my family live there. Four have downloaded the app including a sister and niece who work in a care home and for the NHS respectively. Five relatives have not – their reasons have nothing to do with privacy concerns, rather they reflect age, poor health, and technological abilities. These family



members are among the individuals most vulnerable to the impact of the Coronavirus pandemic. As a result, there are issues of both practice and principle at stake.

So how do we balance the potential benefits alongside privacy safeguards? The Westminster Joint Select Committee on Human Rights has just published a report offering a rights based route to approaching the issue. The report recognises the government's responsibility to protect life under Article 2 of the European Convention on Human Rights (ECHR) and the legitimacy of developing a contact app. Meanwhile, it also highlights Article 8 of the Convention and our right to privacy and family life. This right is a qualified right and can be interfered with, but only in very specific circumstances. In practice, any interference must be set out in law and can among other reasons be to protect health and public safety. The interference should be proportionate and be no more than is required to deal with preventing the spread of the Coronavirus.

The Select Committee concludes that privacy and other human rights protections should be placed in legislation with independent oversight and regular reviews of progress built in. The legislation would enshrine the clear and limited purpose of the app, that the data should not be accessed for any other reason or shared with third parties. Further, the data should only be held locally on a person's phone and must be automatically deleted every 28 days. Data held centrally must be deleted where a user so requests, should not be held for longer than is

required, and should be deleted as soon as the emergency is over. Legislation could also create a duty that personal data held centrally must be subject to the highest security protections and standards. Other human rights considerations involved will include non-discrimination in the areas of immigration and employment, alongside child safeguarding issues. In a highly unusual move, the select committee have taken the decision to publish a draft Bill, reflecting how strongly it feels about the need for statutory safeguards.

The report also canvasses the question of whether a centralised approach where data is shared by a central server managed by the NHS is better for privacy than a decentralised model where most data is stored locally on a person's phone sharing as little data as possible with the NHS. To date, government is piloting its centralised NHSX model arguing that it provides greater scope for data analysis though there is a debate inside government in London about the effectiveness of the NHSX app and privacy issues. The report also notes that in Northern Ireland there will be specific issues around coordination within the UK and Ireland. The Irish government has opted for a decentralized system that has been used in the majority of other countries to date. Ensuring effective compatibility will be one of the delicate practical and political conundrums to eventually land in Northern Ireland Executive minister's in-trays.

UN human rights institutions have had relatively little to say about digital tracing apps to tackle the pandemic. However, human rights and privacy NGOs across the globe have issued a joint statement: 'States' use of digital surveillance technologies to fight the pandemic must respect human rights'. The statement lays down a marker that governments using digital technologies to track and monitor individuals to curb the coronavirus should do so in strict compliance with human rights standards. The statement sets out clear and valuable benchmarks against which digital surveillance can be measured. Signatories include Amnesty International, Liberty, and Human Rights Watch

A contact tracing app will only work if it wins the confidence and trust of people in Northern Ireland. Part of winning that trust will be about openness with the



public including providing statutory safeguards, independent oversight, and regular review. To date, legislation is not the Westminster government's preferred route. In this case, reassuring words from a lectern will not be enough. In addition, a strategy needs to be put in place for individuals who, because of their age, health, or other circumstances, cannot or will not use the app. The app is, of course, only part of a wider approach embracing a manual contact tracing programme which has already been launched by the Department of Health in Northern Ireland.

Harnessing technology for our benefit during the pandemic is welcome but must not be at undue expense of our right to privacy. That is why the Select Committee approach is so commendable.

## NIHRC COVID-19 RESOURCES

NIHRC has published a number of briefing papers and statements in relation to the Covid-19 pandemic. All of these are available from the Commission's website:

[www.nihrc.org](http://www.nihrc.org).

Although the NIHRC office has closed in response to the pandemic, you can still contact the Commission with any queries you may have about human rights issues.

Phone **028 9024 3987** and press 1 for reception, or email [info@nihrc.org](mailto:info@nihrc.org).



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION



## PREPARE FOR A BETTER WORLD

Brian Gormally, Director, CAJ

The Covid-19 pandemic has shocked and changed the world. CAJ is convinced that a human rights perspective is essential to both enduring the pandemic and moving into the future. For us, this approach can be summed up in the following imperatives: Protect people, restrict freedom only as necessary, help the most vulnerable, and together prepare for a better world. We are not alone in this as many organisations have argued for a human rights approach to the crisis.

In April, António Guterres, United Nations Secretary-General, launched the UN's human rights based response to the Covid-19 virus, *Covid-19 and Human Rights: We are all in this together*. This short document gives a persuasive argument why human rights should be at the centre of the response to the pandemic.

The UN's main thesis is expressed at the beginning: "Human rights are key in shaping the pandemic response, both for the public health emergency and the broader impact on people's lives and livelihoods. Human rights put people centre-stage. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity.

But they also focus our attention on who is suffering most, why, and what can be done about it. They prepare the ground now for emerging from this crisis with more equitable and sustainable societies, development and peace."

The document highlights the positive duties on the state to protect the right to life and the right to health and access to health care. It raises the potential threat to civil liberties if temporary restrictions on the freedom of movement are extended beyond what is necessary. It also lists six key human rights messages:

**I. Protecting people's lives is the priority; protecting livelihoods helps us do it:** We must deal with the economic and social impact alongside the public health response;

**II. The virus does not discriminate; but its impacts do:** Inclusive responses to a global threat to ensure no one is left behind;



**III. Involve everyone in your response:** Participation in open, transparent and accountable responses;

**IV. The threat is the virus, not the people:** Emergency and security measures, if needed, must be temporary, proportional and aimed at protecting people;

**V. No country can beat this alone:** Global threats require global responses;

**VI. When we recover, we must be better than we were before:** The crisis has revealed weaknesses that human rights can help to fix.

There are some important civil and political rights that are impacted by the pandemic. First amongst these is the Right to Life expressed in Article 2 of the European Convention on Human Rights (ECHR) and enshrined in UK law by the Human Rights Act (HRA). The State must protect life and must be accountable if it fails to do so. CAJ has already challenged the guidance issued by the Chief Coroner for England and Wales suggesting that "an inquest would not be a satisfactory means of deciding whether adequate general policies and arrangements were in place for provision of personal protective equipment (PPE) to healthcare workers in the country or a part of it". The Presiding Coroner for Northern Ireland, Mrs Justice Keegan, has assured us in writing that "Coroners in this jurisdiction will have discretion to investigate any death on a case by case basis, and will do so based on the individual merits of each case."

We have also critiqued the coronavirus emergency legislation and a briefing can be found here:

[www.caj.org.uk/2020/03/23/covid-19-northern-ireland-and-emergency-law-a-caj-briefing-note/](http://www.caj.org.uk/2020/03/23/covid-19-northern-ireland-and-emergency-law-a-caj-briefing-note/).

However, the UN document makes clear that the

pandemic has exposed shortcomings in the protection of social and economic rights in particular. We can also see in the shocking statistics how the poor, old, disabled, and people from black and minority ethnic backgrounds suffer serious illness and death from the virus disproportionately.

It is also clear that the pandemic has impacted specifically on social and economic rights here in Northern Ireland. Obviously, the disease itself and the necessary responses to it have created unemployment, economic hardship, and illness. However, the point is that the pandemic has exposed the pre-existing frailty of the mechanisms that should have protected these rights better. In effect, the disease has demonstrated existing violations of social and economic rights. As a response, both in the context of the long-overdue development of a Bill of Rights for Northern Ireland and more generally, we should seek to re-open the debate on social and economic (and cultural and environmental) rights.

The advice on a Bill of Rights presented to the Secretary of State by the Northern Ireland Human Rights Commission (NIHRC) in 2008, contained a number of social, economic, cultural, and environmental rights. These were the focus of opposition by some politicians here and the then (Labour) British Government. Their arguments basically claim that such rights take away from the decision making duty of politicians and cannot be properly decided by a court.

In fact, the [advice](#) itself contains a full explanation of how such rights can be vindicated. On page 165/166, NIHRC notes that: "It is widely accepted ... that economic and social rights cannot always impose immediate obligations on states and that economic and social rights frequently impose an obligation of 'progressive realisation' rather than one of immediate effect."

NIHRC also goes on to say: "While progressive realisation does not require that the result sought by the particular right be achieved immediately, it does, however, require that 'all appropriate measures' be taken towards achieving the full effectiveness of the right... A duty to 'progressively realise' a right also imposes an obligation to move as expeditiously and effectively as possible towards that goal..."

If the social and economic rights in the advice had been

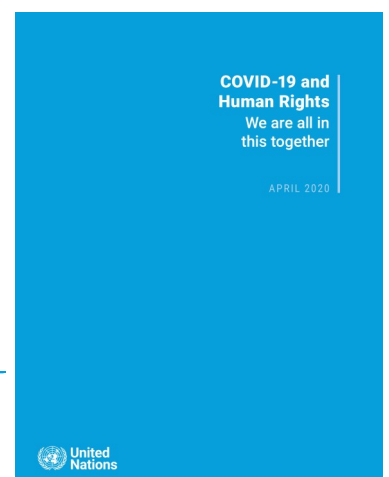
enacted, there might not have been such glaring holes in our health and social care systems. Public authorities would have been clearer in their duty to put people's welfare first and the death toll could have been lower. Those politicians who opposed social and economic rights in the past, and will do so again in the future, should be held to account.

The relevant international treaty is the International Convention on Economic, Social and Cultural Rights (ICESCR), which the UK has long ago signed and ratified. We know that the pandemic is having a disproportionate effect on the poor and vulnerable and has shown that the rights to work (Article 6 ICESCR), to an adequate standard of living (Article 9 ICESCR), to social security (Article 11 ICESCR), and to the highest attainable standard of physical and mental health (Article 12 ICESCR) have been violated in this region. We need to bring these or equivalent provisions into force in domestic law.

In response to the pandemic, we need to say 'Never Again', and push forward towards the goal of a rights based society. In that process, a Bill of Rights will be key. The pandemic should give us the impetus to re-open the debate around a Bill of Rights, while the recent establishment of an [Ad Hoc Bill of Rights Committee at Stormont](#) should provide us with an appropriate forum where the key issues can be raised.

Through the publication of Covid-19 and Human Rights: We are all in this together, the UN has given us the context and a framework for charting the way out of the current crisis. We must not go back to the way we were before. We must be better.

You can download 'Covid-19 and Human Rights: We are all in this together' via the link below: [https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief\\_on\\_human\\_rights\\_and\\_covid\\_23\\_april\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf)



## Civil Liberties Diary - March 2020 to April 2020

Compiled by Sinead Burns from various media sources



**5 March 2020:** Calls have been made to address the lack of oversight in mental health provision in Northern Ireland as it has been revealed that the Regulation and Quality Improvement Authority (RQIA) has no remit to oversee community and in-patient mental health services. Under the Mental Health (NI) Order 1986 there is no legal requirement for the RQIA to inspect or regulate community mental health provision. The Department of Health has stated that it was carrying out a “fundamental review” of the situation in November 2019, but there have been no further updates.

**25 March 2020:** Officials have said that the Covid-19 pandemic has created huge challenges for compensating victims of historical institutional abuse in Northern Ireland. Lockdown restrictions have caused issues for individuals such as obtaining assessments from medical staff and from attending meetings with solicitors which has delayed the payment of compensation to victims.

**30 March 2020:** Campaigners have called for urgent action to enable abortions to be carried out in Northern Ireland during the Covid-19 lockdown. Campaigners have called for the approval of telemedicine to allow people to use abortion pills at home during the lockdown as women are now unable to travel to access abortion services. Women are currently able to take abortion pills at home in England, but this has not been extended to NI.

**31 March 2020:** The government has stated that it may consider curbing the right to protest against abortion in Northern Ireland by creation ‘exclusion zones’ or ‘safe zones’ where pro-life protestors will be banned. A government document has stated that the UN Committee on the Elimination of Discrimination against Women (CEDAW) believes that access to legal abortion services in Northern Ireland has been impeded by the presence of actions of anti-abortion protestors stationed at entrances.

**4 April 2020:** Nurses in Northern Ireland have warned that they would not legally be allowed to treat patients with coronavirus without the proper Personal Protective Equipment. This comes as the number of calls to the Royal College of Nursing in Northern Ireland has increased, with many nurses voicing grave concerns over the safety of nursing staff and patients. Director of the RCN has stated that whilst there is a current supply of PPE for nurses, there are concerns that PPE would run out if there was a surge of cases.

**5 April 2020:** A new initiative has been announced that will see the delivery of up to 10,000 food boxes to vulnerable people in Northern Ireland who have been asked to shield during the Covid-19 lockdown. The boxes will be delivered to those that cannot afford food and do not have access to local support networks. The initiative will also help those at risk of social isolation.

**22 April 2020:** There has been an increase in child custody disputes since the beginning of the Covid-19 lockdown. Current guidelines state that children can go between homes as long as their health is not being put at risk. However, custody disputes have emerged in several cases where communication has broken down over child visits and many children haven’t seen a parent for a period of three or four months.

**22 April 2020:** A civil liberties group has called for more transparency from the HSE regarding the development of a new Covid-19 contact tracing app which would let users know if they have come into contact with someone with coronavirus. The Irish Council for Civil Liberties (ICCL) has expressed concern as contact tracing apps can present various data protection issues and has called for more transparency before such an app can be launched.

**28 April 2020:** The PSNI has said they received almost 2,000 calls relating to domestic abuse incidents in Northern Ireland in the first three weeks of the Covid-19 lockdown. They released these figures as the Northern Ireland Assembly has debated over how to strengthen domestic abuse laws. The Assembly has been debating over new legislation that would see domestic abusers face up to 14 years in prison for the most serious offences.