



Ministry  
of Justice

The Right Honourable  
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Minister of State for Justice

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Your ref: 184Truss  
MoJ ref: 39872

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*See David,*

## CONCLUDING OBSERVATIONS OF THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thank you for your letter of 1 December 2016 to the Secretary of State for Justice, regarding the UN recommendations to the UK under the International Covenant on Economic, Social and Cultural Rights (ICESCR) following our examination in Geneva in June 2016. I am answering as the Minister with responsibility for human rights.

I welcome the Equality and Human Rights Commission's participation in the periodic reporting process under the various UN human rights treaties ratified by the UK, including the ICESCR. My officials have very much welcomed your engagement and shadow reports throughout the ICESCR process.

The UK Government considers the Committee on Economic, Social and Cultural Rights' General Comments, reports and recommendations as valuable guidance for all the States Parties to the ICESCR. However, we remain of the view that they cannot extend, by interpretation, the international obligations contained in the Covenant.

I am confident that the UK continues to comply with its obligations under the ICESCR as well as the International Covenant on Civil and Political Rights (ICCPR) under which we were examined in 2015. In relation to matters falling within my Department's remit, I note your concerns regarding the impact of the legal aid reforms, and also your recommendations on: adopting a national human rights action plan; enhancing human rights legislation in replacing the Human Rights Act 1998; enhancing the status of UN human rights treaties in domestic law by, for example, making the ICESCR directly enforceable in UK courts; increasing the minimum age of criminal responsibility; and limiting the use of restraint and segregation on children in detention.

As you know, we have been asked by the UN to provide a full response to all the ICESCR recommendations in June 2021 (and, separately, to the ICCPR recommendations in July 2020). I do not think it would be appropriate for me to pre-empt these responses by anticipating what we, or indeed the next UK Government from 2020, might say to the UN.

That said, I should like to reassure you that legal aid continues to be available in the most serious cases (such as where people's life or liberty is at stake, where they face the loss of their home, in domestic violence cases or where their children may be taken into care). Exceptional case funding (ECF) may be available for matters that are generally out of scope for legal aid. ECF may be available where failure to provide legal aid would breach the applicant's rights under the European Convention on Human Rights or European Union law (or, in the light of the risk of a breach, it is appropriate to provide funding), subject to means and merits tests. We are also committed to review the legal aid provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 within 3-5 years of implementation, thus by 2018. The precise timing and form of this review will be guided by the UK Government's assessment of the extent to which the reforms have reached a steady state, and by its own and also stakeholders' research and evidence on the impacts of the reforms.

The UK Government has no plans to establish a national human rights action plan. We prefer to drive forward work in specific areas, such as the Government's work on tackling modern slavery. The UK Government does remain committed to reforming the domestic human rights framework. We will be considering further our proposals for a Bill of Rights once we know the arrangements for our EU exit. We will consult fully on those proposals and you remain amongst our key stakeholders in this process.

The UK Government has been giving effect to the ICESCR through a combination of legislation and administrative measures, with the aim of achieving progressively the full realisation of the rights recognised in the Covenant. The Covenant is not however incorporated into domestic law, and Article 2 of the Covenant does not require States Parties to do so.

With regard to youth justice, I should stress that the use of custody has fallen markedly but it will always be needed for the small number of children and young people who commit very serious crimes and present a high risk to the public. We have no plans to change the minimum age of criminal responsibility; we believe that young people aged 10 and over are able to differentiate between bad behaviour and serious wrongdoing, and that young people need to be aware that committing a criminal offence is a serious matter and will be dealt with as such. Restraint in young offender institutions should only be used as a last resort, where there is a risk of harm, and where it is absolutely necessary to do so and no other form of intervention is possible or appropriate. The safety and welfare of young people held in custody is our highest priority; young people cannot be segregated as a punishment and we are clear that children should only be segregated as a last resort, under careful control and regular review, where they are putting themselves and others at risk. The use of segregation is closely monitored and there are careful limits placed on the length of time for which young people can be separated.

I am copying this letter to the Secretary of State for Education and Minister for Women and Equalities, and to the Secretary of State for Work and Pensions.



**SIR OLIVER HEALD QC MP**