

## – The United Kingdom and the European Social Charter –

### Ratifications

The United Kingdom ratified the European Social Charter on 11/07/1962 and has accepted 60 of the Charter's 72 paragraphs.

It has not signed the Additional Protocol to the European Social Charter or the Additional Protocol Providing for a System of Collective Complaints.

It has signed but not yet ratified the Amending Protocol to the European Social Charter and the Revised Charter.

### Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	3.1	3.2	3.3
4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	6.4	7.1	7.2
7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	8.2	8.3	8.4
9	10.1	10.2	10.3	10.4	11.1	11.2	11.3	12.1	12.2	12.3	12.4
13.1	13.2	13.3	13.4	14.1	14.2	15.1	15.2	16	17	18.1	18.2
18.3	18.4	19.1	19.2	19.3	19.4	19.5	19.6	19.7	19.8	19.9	19.10
AP1	AP2	AP3	AP4	AP=Additional Protocol				Grey = Accepted provisions			

### The Charter in domestic law

The United Kingdom is a dualist State.

### Reports \*

Between 1965 and 2015, the United Kingdom submitted 34 reports on the application of the Charter.

The 33rd Report, submitted on 30/11/2012, covers the accepted provisions relating to Thematic Group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29).

The conclusions in respect of these provisions were published in January 2015.

The 34th report, submitted on 03/12/2014, concerns the accepted provisions relating to Thematic Group 4 "Children, family, migrants", namely:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

In addition, the report should concern any information required by the European Committee of Social Rights in the framework of Conclusions 2013 (Articles 3, 11, 12, 13, 14, 23 and 30, relating to Thematic group "Health, social security and social protection"), in the event of non-conformity for lack of information.

Conclusions with respect to these provisions will be published in January 2016.

\* [Following a decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups reported on once every four years.

## **Situation of the United Kingdom with respect to the application of the Charter**

### **Examples of progress achieved in the implementation of social rights under the Social Charter<sup>1</sup>**

#### **Children**

- ▶ Corporal punishment has been abolished in both State schools and grant-maintained schools in the United Kingdom (Education Act 1986 (No. 2)).
- ▶ The protection of children from sexual exploitation and trafficking for economic exploitation strengthened (Sexual Offences Act 2003 Asylum and Immigration Act 2004).

#### **Employment**

- ▶ Dismissing an employee under a closed shop agreement is considered unfair and affords a right of action (Employment Act 1982). Any dismissal on the ground of membership or non-membership of a trade union is automatically unfair (Employment Act 1988). Any discrimination on grounds of membership or non-membership of a trade union on recruitment is unlawful (Employment Act 1990).
- ▶ The confidentiality of trade union membership is protected (Employment Relations Act 1999).
- ▶ Introduction of a statutory procedure for trade union recognition (Employment Relations Act 1999).
- ▶ Workers who take strike action enjoy employment protection for the first eight weeks (Employment Relations Act 1999).<sup>2</sup>
- ▶ The Working Time Regulations must, if possible, be interpreted as follows: if a worker is unable to take any of their four-week annual leave entitlement due to sickness, he can choose to take it at a later date, including, if necessary, in the next leave year (judgments *NHS Leeds v. Lerner* of 2012 and *Sood Enterprises v. Healy* of 2013)

#### **Movement of persons**

- ▶ An appeal may be brought before the Immigration Appeals Tribunal against deportation orders made by the Home Secretary on grounds of national security or for political reasons (1997 Act governing the Special Immigration Appeals Commission).
- ▶ Nationals of States Parties to the Charter are no longer prevented from having access to public funds even if they happen to be subject to immigration control. They may claim means tested social assistance benefits on an equal footing with United Kingdom nationals (Social Security (immigration and Asylum) Consequential Amendments regulations 2000).

#### **Non-discrimination (General)**

- ▶ Access to a court and recognition of the right of appeal against the certifications provided for under section 79 of the Equal Treatment in Employment Act (Northern Ireland) to justify refusing employment on grounds of safeguarding national security or public order.
- ▶ Adoption of the Equality Act on 8 April 2010. This Act, inter alia, requires the Government, when making strategic decisions about the exercise of their functions, to have regard to the desirability of reducing socio-economic inequalities; reforms and harmonises equality law and restates in one text the enactments relating to discrimination and harassment linked to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in areas such as employment, access to services, education; enables certain employers to be required to publish information about the differences in pay between male and female employees.

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<sup>1</sup> "1. The [European Committee of Social Rights] rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure" (Article 2 of the Rules of the Committee).

<sup>2</sup> RecChS(93)3 adopted by the Committee of Ministers on 7 September 1993.

### **Non-discrimination (Nationality)**

► Eligibility for housing benefit (in the United Kingdom, the Isle of Man, Scotland and Northern Ireland), long tenancies for local authority housing and the right to occupy housing (in Scotland and in Northern Ireland) has been extended to foreign nationals who are citizens of States that are Contracting Parties to the Charter provided that they are habitually resident (orders of 1997, 1998 and 1999 on housing and the homeless).

### **Non-discrimination (Gender)**

► An agreement adopted on 6 June 2005 has removed inequalities between spouses with regard to matrimonial property in Northern Ireland.

### **Non-discrimination (Ethnic origin)**

► A comprehensive review of Gypsy and Traveller accommodation policy has been undertaken. An informed and strategic approach is taken to accommodation needs, and the planning system identifies land to meet these needs. Government funding for socially rented sites is available, and the security of tenure of those residing on such sites has been strengthened.

### **Non-discrimination (Disability)**

► Protection against discrimination on grounds of disability was strengthened (Disability Discrimination Act 1995).

## **Cases of non-conformity**

### **Thematic Group 1 “Employment, training and equal opportunities”**

► *Article 10§4 – right to vocational training – encouragement for the full utilisation of available facilities*

Equal treatment for non-EU nationals with respect to fees and financial assistance for training is not guaranteed.

([Conclusions XX-1 \(2012\)](#))

► *Article 18§2 – right to engage in a gainful occupation in the territory of other Parties-Simplifying existing formalities and reducing dues and taxes*

Fees charged for work permits are excessive.

([Conclusions XX-1 \(2012\)](#))

► *Article 18§3 – right to engage in a gainful occupation in the territory of other Parties – liberalising regulations*

Foreign workers who lose their jobs must leave the country, without the possibility of searching for new employment.

([Conclusions XX-1 \(2012\)](#))

### **Thematic Group 2 “Health, social security and social protection”**

► *Article 12§1 – right to social security – existence of a social security system*

The level of Statutory Sick Pay, the Short Term Incapacity benefit and the Contributory Jobseekers Benefit for a single person are inadequate.

([Conclusions XX-2 \(2013\)](#))

### **Thematic Group 3 “Labour rights”**

► *Article 2§2 – right to just conditions of work – public holidays with pay*

The right of all workers to public holidays with pay is not guaranteed. (Conclusions XX-3 (2014))

► *Article 2§4 – right to just conditions of work – reduced working hours or additional holidays in dangerous or unhealthy occupations*

It has not been established that workers exposed to occupational health risks, despite the existing risk elimination policy, are entitled to appropriate compensation measures (Conclusions XX-3 (2014))

► *Articles 2§5 – right to just conditions of work – weekly period of rest*

There are inadequate safeguards to prevent workers from working for more than twelve consecutive days without a rest period. (Conclusions XX-3 (2014))

► *Articles 4§1 – right to a fair remuneration – decent remuneration*

The minimum wage applicable to workers in the private sector does not secure a decent standard of living. (Conclusions XX-3 (2014))

► *Article 4§2 – right to a fair remuneration – increased remuneration for overtime work*

Workers do have no adequate legal guarantees to ensure them increased remuneration for overtime. (Conclusions XX-3 (2014))

► *Article 4§4 – right to a fair remuneration – reasonable notice of termination of employment*

Notice periods are inadequate below three years of service. (Conclusions XX-3 (2014))

► *Article 4§5 - right to a fair remuneration – Limits to wage deductions*

1. it has not been established that the limits on deductions from wages equivalent to the National Minimum Wage are reasonable;
2. the determination of deductions from wages higher than the National Minimum Wage is left at the disposal of the parties to the employment contract.

(Conclusions XX-3 (2014))

► *Article 5 – right to organise*

Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992, which makes unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and Section 65 of this Act, which severely restricts the grounds on which a trade union may lawfully discipline members, represent unjustified incursions into the autonomy of trade unions.

([Conclusions XIX-3 \(2010\)](#)) and (Conclusions XX-3 (2014))

► *Article 6§2 – right to bargain collectively – negotiation procedures*

Workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining.

(Conclusions XX-3 (2014))

► *Article 6§4 – right to bargain collectively – collective action*

1. the possibilities for workers to defend their interests through lawful collective action are excessively limited;
2. the requirement to give notice to an employer of a ballot on industrial action is excessive;
3. the protection of workers against dismissal when taking industrial action is insufficient.<sup>3</sup>

(Conclusions XX-3 (2014))

#### **Thematic Group 4 “Children, families, migrants”**

► *Article 7§5 – right of children and young persons to protection – fair pay*

The minimum wages of young workers aged between 15 and 17 are not fair compared to that of adult workers, which are themselves unreasonably low.

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<sup>3</sup> <sup>3</sup>RecChS(97)3 adopted by the Committee of Ministers on 17 January 1997.

[\(Conclusions XIX-4 \(2011\)\)](#)

► *Article 7§10 – right of children and young persons to protection – special protection against physical and moral dangers*

Child victims of sexual exploitation may be prosecuted.

[\(Conclusions XIX-4 \(2011\)\)](#)

► *Article 8§1 – right of employed women to protection of maternity – maternity leave*

The standard rates of SMP (Statutory Maternity Pay) after six weeks, and MA (Maternity Allowance) were inadequate during the reference period.

[\(Conclusions XIX-4 \(2011\)\)](#)

► *Article 16 – right of the family to social, legal and economic protection*

The right of Roma/Traveller/Gypsy families to housing is not effectively guaranteed.

[\(Conclusions XIX-4 \(2011\)\)](#)

► *Article 17 – right of mothers and children to social and economic protection*

1. Not all corporal punishment in the home is prohibited;
2. The age of criminal responsibility is manifestly too low.

[\(Conclusions XIX-4 \(2011\)\)](#)

► *Article 19§4 – right of migrant workers and their families to protection and assistance – equality regarding employment, right to organise and accommodation*

It has not established that migrant workers enjoy treatment which is not less favourable than that of nationals with respect to: a) remuneration, employment and other working conditions; b) membership of trade unions, enjoyment of the benefits of collective bargaining.

[\(Conclusions XIX-4 \(2011\)\)](#)

► *Article 19§8 – right of migrant workers and their families to protection and assistance – guarantees concerning deportation*

Family members of a migrant worker who are nationals of Contracting Parties that are not members of the EEA or EU, as well as children of a migrant worker who are nationals of EU member states or parties to the EEA but are aged under 17 years of age, are liable to be expelled following a migrant worker's deportation.

[\(Conclusions XIX-4 \(2011\)\)](#)

► *Article 19§10 – right of migrant workers and their families to protection and assistance – equal treatment for the self-employed*

The situation in the United Kingdom is not in conformity with Article 19§10 on the same grounds for which it is not in conformity with paragraphs 4 and 8 of the same Article.

[\(Conclusions XIX-4 \(2011\)\)](#)

**The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Government of the United Kingdom to provide more information in the next report:**

#### **Thematic Group 1 “Employment, training and equal opportunities”**

- Article 1§1 Conclusions XX-1
- Article 18§1 Conclusions XX-1

#### **Thematic Group 2 “Health, social security and social protection”**

- Article 13§4 Conclusions XX-2

**Thematic Group 3 "Labour rights"**

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**Thematic Group 4 "Children, families, migrants"**

- ▶ Article 7§3 Conclusions XIX-4
- ▶ Article 19§2 Conclusions XIX-4
- ▶ Article 19§3 Conclusions XIX-4
- ▶ Article 19§6 Conclusions XIX-4