

Ruth Maguire MSP

Convener

Equalities and Human Rights Committee

2 July 2020

Coronavirus Act: Response to First Progress Report on the use of Emergency Powers in Scotland submitted to Scottish Parliament, published 9th June 2020.

Dear Convener,

As an organisation working across the UK, including within Scotland, the British Institute of Human Rights supported by partner organisations, working in children's rights, older people rights, the rights of people with learning disabilities, carer's rights, advocacy organisations and human rights and equality, across Scotland are writing to you today in response to the publication of the First Progress Report on the use of Emergency Powers in Scotland published on 9th June 2020.

Since the passing of the Coronavirus Act and the Coronavirus (Scotland) Act we at the British Institute of Human Rights, along with many organisations working in Scotland, have raised concerns. These concerns centre around the lack of transparent communication on the use of Emergency Powers in Scotland and the lack of clarity on how the use of these powers will be monitored and reviewed.

We understand that Emergency Powers are not in themselves incompatible with human rights law and exist to safeguard those most in need of protection at a time where resource is depleted. However, to ensure the Powers are used compatibly with human rights law the Scottish Government needs to guarantee that:

1. The process for activation and continued use of Emergency Powers is clear and transparent.
2. That support is provided to public officials (and those delivering a function of public nature) to apply any easements compatibly with human rights law. It cannot be assumed that public bodies have the legal knowledge and capacity to do this.
3. That there is a clear commitment to democratic oversight in monitoring and reporting on the use of Emergency Powers.

The publication of the First (two monthly) Progress Report to the Scottish Parliament published on 9 June (covering the period up to 31st May) raises serious concerns about whether the conditions above are being met. We have prepared a briefing note which details our specific concerns alongside the human rights implications and our recommendations. Some of these concerns are summarised below:

- There is confusion amongst people, service providers, authorities and other organisations involved in care and support in Scotland about which provisions of Scottish law have been suspended.
- Where duties have been suspended, for example social care duties under Section 16 of the Coronavirus Act there is no transparency about which Local Authorities are implementing these easements.

- The First (two monthly) Progress Report to the Scottish Parliament published on 9 June 2020 falls far short of offering any clarity on the use of Emergency Powers at local level.
- The monitoring and review mechanisms explained in the report are themselves of concern. Crucially, they do not offer any way of monitoring whether or not Emergency Powers are being used compatibly with human rights law.
- People and their families remain worried about their access to care and support, advocacy and community groups are unable to challenge without information and those working across health and care cannot offer clarity.

We are writing today in partnership with our Scottish colleagues listed to ask that the Scottish Government considers the concerns raised above. Our recommendations are written in our briefing note and summarised below:

- The switching on and off of Emergency Powers in Scotland must be clearly communicated. In particular, there must be absolute clarity through dates added to any accompanying Guidance.
- There must be transparency around which Local Authorities are using the Emergency Powers, and which are not.
- People must be provided with easy to access information that enables them to understand what duties the Local Authority they are interacting with are bound by.
- Frontline staff must be supported to recognise and respond to a situation in which a person's legally protected human rights are at risk. This is necessary during Covid-19 and beyond.
- Leadership should have oversight of these human rights risks, and use this to support non-discriminatory and proportionate service-level and strategic decisions in responding to the pandemic
- Information about the Emergency Powers being used at local level should be monitored centrally via a robust procedure which enables informed decisions to be made about the continued availability of the Powers. In doing this, the Scottish Government can identify trends and concerns, including human rights flash points during the pandemic, as well as positive practice which others can learn from.

We will continue to work with the Scottish Government, alongside our Scottish colleagues in civil society groups and networks, in calling for these recommendations to be implemented. We believe they are in line with previously stated commitments of the Government and offer some important ways to make certain that people in Scotland have clarity and reassurance about the protection of their rights in this unsettling time.

Yours sincerely,

The British Institute of Human Rights in partnership with; Alzheimer Scotland, Article 12 in Scotland, Carers Scotland, C-Change Scotland, Health and Social Care Alliance Scotland (the ALLIANCE), Highland Home Carers, NDTi, Scottish Care, SCLD, Scottish Independent Advocacy Alliance, Scottish Legal Action Group, SDS Collective, SPAEN and Together (Scottish Alliance for Children's Rights).



Partnership Organisations:

