

Chapter 7. Tax in reverse: Financial support and social security during COVID-19

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Dr Luke D. Graham's Economic and Social Research Council-funded PhD, undertaken at Lancaster University, applied an Economic, Social, and Cultural Rights framework to Destitution in the UK. A monograph based on this thesis titled 'International Human Rights Law and Destitution: An Economic, Social and Cultural Rights Perspective' is under contract with the Routledge Research Series in Human Rights and is expected for publication in 2022. Broadly, his research focuses on Human Rights Law and, more specifically, Economic, Social, and Cultural Rights. Currently, he is exploring poverty and the right to clothing. <https://orcid.org/0000-0003-0678-2106>

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Abstract

This chapter examines the principles underpinning the UK Government's tax and benefit design in response to COVID-19. Since 2010, a central theme underpinning tax and benefit design has been the avoidance of fraud. For those seeking to receive benefits in the UK, this has resulted in a focus on benefits eligibility as opposed to immediacy of need. Consequently, throughout the last decade, this restrictive approach to the receipt of benefits has negatively impacted the enjoyment of the right to social security. COVID-19 has, however, challenged these underpinnings and the UK Government's COVID-19 financial support packages have paid less heed to the need to avoid fraud. Rather, the immediacy of need triumphed. Consequently, during COVID-19 the financial support policies which were made available

the ICESCR.²⁶ This reflects the importance of the International Labour Organisation standard-setting in informing understandings of the right to social security.²⁷ The central role of the International Labour Organisation is indicative of the right's underpinnings: the right to social security has been explicitly tied to the concept of work and such narrow underpinnings may limit social security to 'income-based and situation-based benefits for workers and their families.'²⁸

Here a distinction can be drawn between contribution-based social security (social insurance) and non-contribution-based social security (social assistance).²⁹ Although some regard social assistance as separate from social security, because 'assistance is often discretionary and, therefore, neither a right nor a duty',³⁰ we use the term social security – and the right to social security – as an umbrella term encompassing both of these concepts. This is because the Committee on Economic, Social and Cultural Rights (CESCR) has explicitly specified 'that the right to social security includes the right to social assistance.'³¹ It follows that both contributory and non-contributory social security payments are subject to obligations stemming from Article 9 of the ICECSR: the right to social security.

Principles underpinning the UK's social security system

Despite these human rights-based obligations, the right to social security does not inform the UK's social security structures. Rather, since the coalition government was elected in 2010, the UK's approach to social security has been one which has undermined the realisation of ESCRs. Wilson et al provide an overview of the reforms to social security announced since the coalition government took office in 2010. These include changes to tax credits; changes to housing benefit for private renters; changes to deductions taken from Housing Benefit and Council Tax Benefit; restricting contributory employment and support allowance to one year; replacing the disability living allowance; abolishing council tax benefit; introducing the

²⁶ Secretary General of the United Nations, 'Compilation of Guidelines on The Form and Content of Reports to Be Submitted by States Parties to The International Human Rights Treaties (2009) UN.Doc. HRI/GEN/2/Rev.6 Chapter 2 (Annex) (B)' para 27.

²⁷ Martin Scheinin, 'The Right to Social Security' in Asbjorn Eide et al (ed), *Economic, Social and Cultural Rights: A Textbook* (Second Revised Edition, Kluwer International Law 2001) 214–215.

²⁸ *ibid.* *Our emphasis*

²⁹ *ibid* 211.

³⁰ Eide (n 3) 202.

³¹ Committee on Economic and Social Rights, 'General Comment No. 19: The Right to Social Security (Art. 9)' (23 Nov 2007) UN.Doc. E/C.12/GC/19 (n 18) para 4 (b).

social security and a whole range of associated human rights. Consequently, the UK's social security structures have not aligned with the state's obligations under the Article 9 of the ICESCR.

COVID-19, however, forced a change in approach. This chapter provides a comprehensive overview of the support provided to both households and individuals. From this overview, it is clear that, whereas once the prevention of fraud was prioritised, the immediacy of need has come to influence COVID-19 financial support packages in the UK. These temporary measures are decidedly more generous than the social security measures which existed before the pandemic. As such, these enhancements have improved the enjoyment of the right to social security in the UK. However, they were only ever intended to be temporary and do not, yet, represent an ideological shift in tax or benefit design.

As such, there is a clear role for policy going forwards 'and maintaining a higher (but far from high) basic level of benefits can provide the route to ensuring that household living standards – especially for those on low and middle incomes – share in the wider economic recovery'.⁸¹ The post-COVID social security system will likely continue to require government 'interventions and flexibility'.⁸² Therefore, the pandemic offers the potential to powerfully rebut the assumptions upon which a decade of social security austerity has been founded. In turn, the cruciality of social security in response to the pandemic may contribute to improved social security structures in the UK. It has been observed that COVID-19 policy – including social security policy – changes have grown in response to public pressure.⁸³ It may well be that public pressure can be harnessed to entrench the positive effects of these changes and to push for stronger changes. The right to social security has the potential to serve as an important yardstick in informing our future social security structures.

References

Allen, K. 'Whose Crisis Counts? Intersectionality, Austerity and the Politics of Survival' (2018) 41 *Ethnic and Racial Studies* 2301.

Alston, P. 'Report of the Special Rapporteur on Extreme Poverty and Human Rights: Visit to the United Kingdom of Great Britain and Northern Ireland' (2019) UN.Doc.A/HRC/41/39/Add.1

⁸¹ Brewer and others (n 45) 9.

⁸² Earwalker and McDonald (n 29) 4.

⁸³ Paul Cairney, 'The UK Government's COVID-19 Policy: Assessing Evidence-Informed Policy Analysis in Real Time' [2020] *British Politics* <<https://doi.org/10.1057/s41293-020-00150-8>> accessed 19 February 2021.

Brewer, M. and Handscomb, K. 'This Time Is Different – Universal Credit's First Recession' (Resolution Foundation 2020) <<https://www.resolutionfoundation.org/publications/this-time-is-different-universal-credits-first-recession/>> accessed 19 February 2021.

-- 'The Debts That Divide Us' (Resolution Foundation 2021)
<<https://www.resolutionfoundation.org/app/uploads/2021/02/The-debts-that-divide-us.pdf>> accessed 19 February 2021.

Brewer, M. and others, 'The Living Standards Outlook 2021' (Resolution Foundation 2021)
<<https://www.resolutionfoundation.org/app/uploads/2021/01/Living-standards-outlook-2021.pdf>> accessed 19 February 2021.

Burton, J. 'High Court to decide whether it was lawful of the Government not to give nearly 2 million people on disability benefits the same £1040 a-year increase that it has given Universal Credit recipients' Doughty Street Chambers (19th April 2021) <<https://www.doughtystreet.co.uk/news/high-court-decide-whether-it-was-lawful-government-not-give-nearly-2million-people-disability>> last accessed 30th May 2021.

Cairney, P. 'The UK Government's COVID-19 Policy: Assessing Evidence-Informed Policy Analysis in Real Time' [2020] British Politics <<https://doi.org/10.1057/s41293-020-00150-8>> accessed 19 February 2021.

Committee on Economic and Social Rights 'Substantive Issues Arising in The Implementation of The International Covenant on Economic, Social and Cultural Rights: Poverty and The International Covenant on Economic, Social and Cultural Rights' (4 May 2001) UN.Doc. E/C.12/2001/10 para 8.

-- 'General Comment No. 19: The Right to Social Security (Art. 9)' (2007) UN.Doc. E/C.12/GC/19.

Department for Work and Pensions 'Guidance: Universal Credit for the self-employed' (18th June 2020) <<https://www.gov.uk/government/publications/universal-credit-and-self-employment-quick-guide/universal-credit-and-self-employment-quick-guide#the-minimum-income-floor>> accessed 22 February 2021.

Earwalker, R. and McDonald, R. 'Briefing: Strengthen Social Security for a Stronger Economy' (Joseph Rowntree Foundation 2020) 4

<<https://www.jrf.org.uk/file/56686/download?token=fprqBaSE&filetype=briefing>> accessed 19 February 2021.

Edmiston, D. 'Welfare, Austerity and Social Citizenship in the UK' (2017) 16 *Social Policy & Society* 261.

Eide, A. 'Adequate Standard of Living' in Daniel Moeckli et al. (ed), *International Human Rights Law* (Third Edition, OUP 2018) 187-207.

Fitzpatrick, S. and others., 'Destitution in the UK 2020' (Joseph Rowntree Foundation 2021) <<https://www.jrf.org.uk/file/57091/download?token=RUTqeIbh&filetype=full-report>> accessed 19 February 2021.

Freedman, J. 'Improving (not perfecting) tax legislation: Rules and principles revisited' [2010] *British Tax Review* 717.

Garthwaite, K. and Bambra, C. 'How the Other Half Live': Lay Perspectives on Health Inequalities in an Age of Austerity' (2017) 187 *Social Science & Medicine* 268.

Grover, C. 'Violent Proletarianisation: Social Murder, the Reserve Army of Labour and Social Security "Austerity" in Britain' [2018] *Critical Social Policy* 1.

HM Treasury, *Putting the Frontline First – Smarter Government* (Cm 7753).

-- Budget 2021 (March 2021) HC 1226.

House of Commons Treasury Committee, *The administration of tax credits* (HC 811-I).

International Labour Organization ILO, 'Extending Social Security to All: A Guide through Challenges and Options' 12 <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_146616.pdf> accessed 4 February 2020.

Jones, J.A. 'Tax law: Rules or principles?' (1996) 17(3) *Fiscal Studies* 63.

Judge, L. and Slaughter, H. 'Working Hard(Ship): An Exploration of Poverty, Work and Tenure' (Resolution Foundation 2021) <<https://www.resolutionfoundation.org/app/uploads/2020/02/Working-hardship-report.pdf>> accessed 18 February 2021.

Lamarche, L. 'The Right to Social Security in the International Covenant on Economic, Social and Cultural Rights' in Chapman, A. and Russell, S. (eds), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*(Intersentia 2002) 87–114.

Mayhew, K. and Anand, P. 'COVID-19 and the UK Labour Market' (2020) 36 *Oxford Review of Economic Policy* S215, S215.

McDonald, R. 'Last minute extension of furlough undermines its effectiveness' (2020) Joseph Rowntree Foundation. <https://www.jrf.org.uk/blog/last-minute-extension-furlough-undermines-its-effectiveness> accessed 30 May 2021.

National Fraud Authority, 'A fresh approach to combating fraud in the public sector: The Report of the Smarter Government Public Sector Fraud Taskforce' (March 2010) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/249252/NFA_Smarter_Government_Report.pdf> accessed 30 May 2020.

Office for Budget Responsibility, 'The rising cost of the coronavirus policy response' (3 March 2021) <<https://obr.uk/box/the-rising-cost-of-the-coronavirus-policy-response-2/>> accessed 30 May 2021.

Office for National Statistics, 'Labour Market Overview, UK - Office for National Statistics' <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/january2021>> accessed 19 February 2021.

Prebble, J. 'Why is tax law incomprehensible?' [1994] *British Tax Review* 380.

Scheinin, M. 'The Right to Social Security' in Eide, A. et al (ed), *Economic, Social and Cultural Rights: A Textbook* (Second Revised Edition, Kluwer International Law 2001) 211-221.

Sloman, P. 'Beveridge's rival: Juliet Rhys-Williams and the campaign for basic income, 1942–55' (2016) 30(2) *Contemporary British History* 203.

Rys, V. *Reinventing Social Security Worldwide: Back to Essentials* (Policy Press 2010).

Secretary General of the United Nations, 'Compilation of Guidelines on The Form and Content of Reports to Be Submitted by States Parties to The International Human Rights Treaties' (2009) UN.Doc. HRI/GEN/2/Rev.6 Chapter 2 (Annex) (B).

Social Security Advisory Committee, 'A Review of the COVID-19 Temporary Measures: Occasional Paper 24' (GOV.UK, 18 November 2020) <<https://www.gov.uk/government/publications/a-review-of-the-covid-19-temporary-measures/a-review-of-the-covid-19-temporary-measures-occasional-paper-24>> accessed 19 February 2021.

Summers, K. and others, 'Claimants' Experiences of the Social Security System during the First Wave of COVID-19' (Distant Welfare 2021) <<https://www.distantwelfare.co.uk/winter-report>> accessed 19 February 2021.

Trussell Trust 'Lockdown, Lifelines and the Long Haul Ahead: The Impact of Covid-19 on foodbanks in the Trussell Trust Network' (2020) <<https://www.trusselltrust.org/wp-content/uploads/sites/2/2020/09/the-impact-of-covid-19-on-food-banks-report.pdf>> accessed 21 September 2020).

Walker, C. *Managing Poverty: The Limits of Social Assistance* (Routledge 1993).

Wilson, T. and others, 'The Local Impacts of Welfare Reform: An Assessment of Cumulative Impacts and Mitigations' (Local Government Association 2013) 10 <<http://www.learningandwork.org.uk.gridhosted.co.uk/wp-content/uploads/2017/01/The-local-impacts-of-welfare-reform-version-7.pdf>> accessed 14 November 2020.

Witteveen, D. 'Sociodemographic Inequality in Exposure to COVID-19-Induced Economic Hardship in the United Kingdom' (2020) 69 *Research in Social Stratification and Mobility* 4.