

Policy Brief

Covid-19 Review Observatory

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KEY INFO

Research question: How has the principle of parliamentary accountability for human rights fared during the pandemic, and what this might tell us about the robustness of constitutional arrangements in the UK?

Policy area or themes

- Ethics, Procurement and Governance
- Equality, Diversity and Inclusion

Methods: Doctrinal legal analysis, close reading of legislative debates, parliamentary observation

Geographical area: All of UK

Research stage: In progress

Summary of the research

Crises put parliaments and governments under pressure: they must respond quickly to vast and complex problems. Those responses can have serious implications for rights, but parliaments may not have time or capacity to subject government to optimal levels of scrutiny. This project asked whether and how the four parliaments in the UK have navigated this challenge during the pandemic.

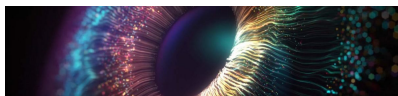
By closely analysing parliamentary debates on pandemic-related legislation, 'everyday' accountability techniques such as question time and scrutiny of delegated legislation, and ad hoc accountability mechanisms such as inquiries by parliamentary committees, the Observatory seeks to outline and understand how parliamentary accountability for rights protection has operated in the pandemic and what, if anything, this might tell us about constitutional arrangements in the UK.

The Observatory is led by Professor Fiona de Londras, a specialist in human rights in complex policy areas. She is supported by Daniella Lock and Pablo Grez Hidalgo, both specialist public lawyers with particular knowledge of law in emergencies (Lock) and Scottish public law (Grez Hidalgo).

Policy recommendations

Our preliminary recommendations include:

- In designing primary legislation to address public health and similar crises, parliamentarians should ensure incorporate effective safeguards including sunset clauses, robust periodic review mechanisms, mandated rights-related reporting, mandated impact assessments, clear requirements for the use of scrutiny-light mechanisms of delegated law-making to be justified, and enhanced mechanisms for parliamentary scrutiny of executive action such as, for example, ad hoc thematic committees.



- Across all parliaments in the UK, parliamentarians should remain cognisant of their constitutional role in human rights protection, ensuring that rights-related concerns are recognised as a key benchmark in holding government to account
- Parliamentary committees should consider how rights-related concerns might be incorporated in their inquiries, whether thematic or cross-committee inquiries might be undertaken, and how to better support broad participation in their inquiries.
- In designing public inquiries across the UK, governments and parliamentarians should be attentive to the accountability work already undertaken by parliamentary inquiries and how the public inquiry might address gaps (in substance, framing, and participation) that remain

Key findings

- Human rights have been marginal to Westminster debates on pandemic-related legislation, but considerably more prominent in analogous debates in the Scottish Parliament. Although the limited competence of the Scottish Parliament may partly explain this, there appears also to be a stronger culture of rights-engagement there than is evident in Westminster.
- A large proportion of pandemic-related legislation has taken the form of delegated legislation with a heavy reliance on the Made Affirmative Procedure. This reduces the opportunities for scrutiny substantially, and in practice parliaments have provided almost no rights-related scrutiny of delegated legislation.
- Accommodations introduced to address concerns about the marginalisation of Westminster, such as regular reporting and six-month reviews of the Coronavirus Act 2020, have not mitigated this in a meaningful way. This can be explained by the design of the review mechanisms, the Government's management of parliamentary time, and MPs' occasional and often vague engagement with rights.
- Parliamentary committees in Westminster have undertaken substantial amounts of accountability work in the form of inquiries. However, engagement with rights and rights-related concerns have been rare in these inquiries, apart from in committees that are rights-focused by design. As a result, the accountability achieved through these inquiries is, to date, fragmented, often focused narrowly on financial concerns, and insufficiently engaged with rights.

Further information

www.birmingham.ac.uk/cvro

Podcast: <https://anchor.fm/pandemicandbeyond/episodes/Pandemic-and-Beyond-Episode-15-The-COVID-19-Review-Observatory-e1e7dgr/a-a7cnq19>

Open access publications and webinars: <https://blog.bham.ac.uk/cvro/cvro-publications/>

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