



House of Commons
House of Lords

Joint Committee on Human
Rights

**Proposal for a draft
State Immunity Act 1978
(Remedial) Order 2022:
State Immunity & The
Right of Access to a Court**

Second Report of Session 2022–23

*Report, together with formal minutes relating
to the report*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Summary

The Government's proposed draft Remedial Order concerns the immunity that foreign states have from domestic law in respect of employment disputes brought by workers in diplomatic missions or consular posts in the UK. The State Immunity Act 1978 was found by the UK's Supreme Court to be incompatible with the European Convention on Human Rights to the extent that it grants greater immunity to foreign states than that required by customary international law, and as such prevents access to a court for certain categories of employees, such as domestic workers, in a way that is not justifiable by reference to international law.

We welcome the Government's Remedial Order, which seeks to amend the State Immunity Act to remedy its incompatibility with the ECHR. The proposed draft Order seems to rectify the incompatibilities found, and meet the various procedural criteria required of such orders. It would make targeted amendments to the State Immunity Act which would have the effect that a person would only be barred from accessing a court to determine their employment dispute with their employer where that was required by international law.

One of the amendments the Remedial Order would make to the State Immunity Act would be to specify that the State would only be immune in respect of employment contracts concerning staff employed as a diplomatic agent or consular officer, or otherwise employed in the "exercise of sovereign authority". It remains to be seen how employment contracts entered into in the "exercise of sovereign authority" will be interpreted, and therefore whether, in some cases, it might cover some roles such as driver or domestic servant. The Government should consider whether it is possible for the drafting to give greater legal certainty to employees and employers as to which roles would and would not normally be considered to be an exercise of "sovereign authority".

A related amendment would provide that a state was immune where the State engaged in the conduct complained of in the exercise of sovereign authority. We consider that the Government should provide further detailed analysis to justify why this limb is required by customary international law, and, to explain the sorts of conduct this is intended to catch. If that analysis is not convincing, then the Government should consider redrafting that provision to ensure that it goes no further than the extent of state immunity required by customary international law.

Further, the Foreign Secretary should remain vigilant and, where relevant, proactively review the state of UK law giving effect to immunities to ensure that immunities do not go further than the extent necessary, and therefore do not unjustifiably interfere with human rights in the UK.

We have some concerns about the length of time that it has taken successive Foreign Secretaries to act to remove this incompatibility, which has clearly affected a not insignificant number of domestic workers in the UK. The Supreme Court judgements in *Benkharbouche* and *Janah* were made in 2017, five years ago. To the extent that a declaration of incompatibility makes clear that the UK is in breach of its international legal obligations to ensure that people in the UK have their basic human rights respected, then the UK Government has a duty to take action to address such failings.

We therefore ask that the Government works with Parliament to devise a structured system for setting timescales and methods for addressing situations where UK laws are known to breach the human rights of people in the UK. This may become more pressing if the Government's Bill of Rights results in an increase in declarations of incompatibility.

1 Introduction

The issue that the proposed draft Order addresses

1. This proposed Remedial Order concerns the ability of workers in the UK, and in particular domestic workers, to be able to access a court in respect of employment disputes with their employers where their employers are a diplomatic mission or consular post in the UK.

2. The State Immunity Act 1978 (SIA) currently grants foreign States wide immunity in the UK in respect of employment disputes. The immunity conferred under the SIA in respect of employment disputes goes further than that required by customary international law, and as such prevents access to a court beyond that required by international law. The specific sections of SIA at issue are:

- a) Section 4(2)(b) SIA which confers immunity on a state with respect to proceedings relating to a contract of employment between a state and a person who at the time of the contract is neither a UK national nor a UK resident; and
- b) Section 16(1)(a) SIA which confers immunity on a state in respect of proceedings concerning the employment of members of a diplomatic mission or a consular post, including its administrative, technical and domestic staff.

3. This proposed Remedial Order follows the Supreme Court judgment in the joined cases of *Benkharbouche and Janah*.¹ The Supreme Court found that sections 4(2)(b) and 16(1)(a) of the State Immunity Act 1978 (SIA) are incompatible with the right to access a court to the extent that it goes further than the principles of international law in granting states immunity in respect of disputes arising from employment contracts. To that extent, it is a disproportionate and unjustified interference with the right to access a court, as part of the right to a fair trial protected under Article 6 ECHR, including as read with Article 14 ECHR (protection from discrimination). These provisions of SIA were also held to be incompatible with Article 47 of the EU Charter of Fundamental Rights.

4. As the Government has explained in its required information, the Supreme Court held that whether the employment of an individual constituted a sovereign act would depend on the employer-employee relationship, and that “employment of purely domestic staff in a consular post or diplomatic mission was a private act, rather than a sovereign act. The Supreme Court also held that a person’s nationality and residence at the date of the employment contract are not proper grounds for denying a person access to the court in respect of their employment in the UK.”²

5. The Committee welcomes the Government’s action in proposing the draft Remedial Order to remedy the incompatibility in the State Immunity Act 1978 with the right to access a Court, protected under the Convention rights to a fair trial and to non-discrimination.

¹ *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs and Secretary of State for Foreign and Commonwealth Affairs and Libya v Janah* [2017] UKSC 62

² “[Required information](#)” means (a) an explanation of the incompatibility which the (proposed) order seeks to remove, including particular of the relevant declaration, finding or order; and (b) a statement of the reasons for proceedings by way of Remedial Order and for making an order in those terms (See HRA, Schedule 2, paragraph 5).

Role of the Joint Committee on Human Rights

6. The Human Rights Act 1988 (HRA) provides that where a court has found legislation to be incompatible with a right protected under the European Convention on Human Rights 1950 (ECHR), Ministers may correct that incompatibility through a “Remedial Order”, and may use such an order to amend primary legislation.³ There are special provisions to ensure that this power is not used inappropriately. In the non-urgent procedure, a proposal for a draft has to be laid before Parliament for 60 days, together with the required information, during which time representations may be made. If the Government decides to proceed, it will then lay a draft Order, accompanied by a statement responding to the representations and explaining what changes, if any, have been made to the draft in consequence. In order to be made, the draft Order must be approved by each House of Parliament a further 60 days after laying.⁴

7. A proposal for a draft State Immunity Act 1978 (Remedial) Order 2022, together with the required information, was laid before both Houses on 11 May 2022.⁵

8. The Standing Orders of the Joint Committee on Human Rights (JCHR) require us to report to each House our recommendation as to whether a draft Order in the same terms as the proposal should be laid before Parliament, and we may also report on any matter arising from our consideration of the proposal.⁶ The Committee reports on the technical compliance of any Remedial Order with the HRA and notes whether the special attention of each House should be drawn to the Order on any of the grounds specified in the Standing Orders relating to the Joint Committee on Statutory Instruments (JCSI).

9. We issued a call for evidence on the Government’s proposal on 19 May 2022.⁷ We are grateful to those who responded to our call for evidence or drew our attention to other relevant information, which has been very useful. All written submissions we received can be found on our website.⁸ We have also been in contact with officials from the Foreign, Commonwealth and Development Office who have been helpful throughout. Further, on 19 May 2022 the Chair wrote a letter to the Foreign Secretary seeking further clarification as to certain elements relation to the proposed State Immunity Act 1978 (Remedial) Order 2002, in particular relating to the compatibility of laws relating to state immunity, diplomatic immunity and consular immunity, with human rights protections and the right of access to a court.⁹ Unfortunately there have been delays in the FCDO replying

3 [Human Rights Act 1998](#), section 10 and schedule 2.

4 There is also an urgent procedure, in which the Minister may lay a made order, but there is a period of 120 days (divided into two 60-day periods) during which representations may be made and responded to. In both cases, each House of Parliament must then approve the Order if it is to have effect (or continue to have effect in the case of the urgent procedure).

5 The Foreign Secretary purported to lay the proposed Remedial Order in the Commons on 20 April 2022 and in the Lords on 25 April 2022. However, the proposed Remedial Order was not published and was laid without the “required information”, as required by paragraph 3 of schedule 2 HRA. The FCDO therefore withdrew, re-laid and published the proposed Remedial Order and the required information on 11 May 2022.

6 House of Commons, [Standing Orders](#), Public Business 2021, HC 804, S.O. No. 152B and the Standing Orders of the House of Lords relating to Public Business 2021, HL Paper 232, S.O. No. 73(1)(c).

7 Joint Committee on Human Rights, [Call for evidence: Proposal for a draft State Immunity Act 1978 \(Remedial\) Order](#)

8 Joint Committee on Human Rights, [Written evidence: Proposal for a draft State Immunity Act 1978 \(Remedial\) Order](#)

9 [The letter to the Foreign Secretary relating to the State Immunity Act 1978](#), dated 19 May 2022 can be found in the Annex

to this letter and we have not yet received a response. We look forward to receiving a substantive response in due course—and in any event before the Remedial Order is laid in draft.

Matters for consideration

10. In order to consider the proposed Remedial Orders adequately, the Committee generally asks:

- Have the conditions for using the Remedial Order process (section 10 and Schedule 2 HRA) been met?
- Are there “compelling” reasons for the Government to remedy the incompatibility by Remedial Order?
- Is the procedure adopted (non-urgent in this case) appropriate?
- Has the Government produced the required information and effectively responded to other requests for information from the Committee?
- Does the proposed Order remedy the incompatibility with Convention rights and is it appropriate? For example, is any additional provision contained in the proposed order appropriate and *intra vires*—and does the proposed order omit additional provisions which it should have contained?
- Are the criteria of technical propriety applied by the JCSI satisfied?

11. The relevant grounds on which the JCSI can draw a statutory instrument to the special attention of each House are:

- that it imposes a charge on the public revenues or requires payments to be made to a public authority;
- that there appears to have been unjustifiable delay in the publication or in the laying of the Order before Parliament;
- that there appears to be a doubt whether it is *intra vires* or that it appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;
- that for any special reason its form or purport calls for elucidation;
- that its drafting appears to be defective; or
- on any other ground which does not impinge on its merits or on the policy behind it.¹⁰

10 House of Commons, [Standing Orders](#), Public Business 2021, HC 804, S.O. No. 151 and the [Standing Orders of the House of Lords relating to Public Business 2021](#), HL Paper 232, S.O. No. 74.

2 The law of state immunity & the right of access to a court

State immunity under international law

12. A foreign State may benefit from a number of different immunities from jurisdiction, including:

- a) diplomatic immunity, which is governed in international law by the Vienna Convention on Diplomatic Relations 1961 (VCDR) and given effect in domestic law by the Diplomatic Privileges Act 1964;
- b) consular immunity, which is governed in international law by the Vienna Convention on Consular Relations 1963 (VCCR) and given effect in domestic law by the Consular Relations Act 1968; and
- c) sovereign immunity, which is governed by customary international law, and is given effect in domestic law by the Sovereign Immunity Act 1978.¹¹

13. State immunity is a mandatory procedural rule of customary international law which limits a domestic court's jurisdiction over foreign States.¹² It derives from the sovereign equality of States. It is somewhat related to, but not to be confused with diplomatic immunity and consular immunity.

14. States have historically taken two different approaches to state immunity: the doctrine of absolute immunity (i.e. that all acts of a sovereign are immune) and the doctrine of restrictive immunity (i.e. that a sovereign is only immune in respect of acts that are part of their sovereign authority).

15. Customary international law is the principal source of state immunity law internationally. The UN Convention on Jurisdictional Immunities of States and their Property (2004), which followed an International Law Commission project on the topic of state immunity, purports, at least in part, to codify customary international law on state immunities. However, in places it develops (rather than reflects) customary international law. Moreover, this UN Convention has not yet entered into force, and the UK has signed but not ratified the Convention. The Convention is therefore not legally binding and customary international law determines the extent of state immunity in international law.

16. The UK is also signatory to the Council of Europe's European Convention on State Immunity (Basle, 1972). However, this Convention is regional and not widely adopted and therefore cannot be said to represent customary international law—although it is binding as between the UK and other States parties to that Convention.¹³

11 There are also bilateral or regional treaties relevant to all three of these types of immunity, but these tend to be specific to the States party to those treaties.

12 Customary international law is a source of international law that is borne of a combination of State practice and a view taken by States that this State practice is legally binding. The other source of international law is treaties.

13 The States Party to the European Convention on State Immunity are Austria, Belgium, Cyprus, Germany, Luxembourg, Netherlands, Switzerland, and the UK. Portugal has signed but not ratified the Convention. The UK is also a signatory to the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships (Brussels, 1926), although the subject-matter of that Convention is not relevant to the matters of employment that are at issue here.

The State Immunity Act 1978 & employment proceedings

17. The SIA gives effect to state immunity in domestic law. The SIA replaced the common law, and sets out when, in domestic law, foreign States will be immune with respect to legal proceedings brought in the United Kingdom. To a large extent, the SIA gives effect in domestic law to the UK's international obligations under customary international law (as largely reflected in the UN Convention on Jurisdictional Immunities of States and Their Property), as well as the UK's obligations under the European Convention on State Immunity.

18. Section 1 SIA provides that a State is immune from the jurisdiction of the courts of the United Kingdom except as set out in the SIA.

19. Section 4(1) SIA provides that a State is not immune from jurisdiction in respect of employment contracts made in the UK or where the work is to be wholly or partly performed in the UK. However, the State is immune if the individual is a national of that State (s. 4(2)(a) SIA); the individual was not a UK national and was not habitually resident in the UK when the contract was made (s. 4(2)(b) SIA); or the parties have otherwise agreed in writing (s. 4(2)(c) SIA).¹⁴

20. Section 16 SIA provides that the SIA does not affect any immunities conferred by the Diplomatic Privileges Act 1964 or the Consular Relations Act 1968. In particular s. 16(1)(a) SIA provides that section 4 SIA (i.e. that a State is not immune from jurisdiction in respect of employment contracts made in the UK or where the work is to be wholly or partly performed in the UK) does not apply to employment proceedings of members of a diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations, or members of a consular post within the meaning of the Vienna Convention on Consular Relations.

The right of access to a court under Article 6 ECHR & state immunity

21. Article 6 ECHR, the right to a fair trial, implicitly confers a right of access to a court to determine a dispute.¹⁵ This right of access to a court corresponds to a common law right in the UK,¹⁶ and is also an aspect of the rule of law. Restrictions to the right of access to a court may be justified if they pursue a legitimate objective by proportionate means, and do not impair the essence of the right.¹⁷

22. The operation of the rules of state immunity can interfere with the right to access a court, protected under Article 6 ECHR. However, the existence of Article 6 ECHR does not invalidate state immunity as "[A]rticle 6 cannot confer on a Court jurisdiction which it does not have, and a State cannot be said to deny access to its courts if it has no access to give",¹⁸ for example due to the operation of a mandatory rule of customary international law, such as state immunity. Therefore, whilst the Strasbourg caselaw has consistently

14 In respect of offices run for commercial purposes, section 4(2)(a) and (b) only confer immunity where the individual was habitually resident in that foreign State when the employment contract was made [section 4(3) SIA].

15 *Golder v UK* [1975] 1 EHRR 524; *Benkharbouche and Janah* at para 14.

16 *Benkharbouche and Janah* at para 14; *Blackstone's Commentaries*, 4th ed (1876) 111.

17 *Ashingdane v UK* [1985] 7 EHRR 528, paragraph 57.

18 *Jones v Ministry of the Interior of the Kingdom of Saudi Arabia* [2007] 1 AC 270 at paragraph 14.

held that Article 6 will be engaged in cases involving state immunity, state immunity is a justifiable interference with Article 6 to the extent that it is derived from a fundamental principle of international law.¹⁹ Article 6 will, however, be violated in cases where a claim to state immunity is not founded in international law. It is therefore crucial to establish exactly what is required by international law in order to ascertain whether any interference with Article 6 is justified.

23. Whilst the UN Convention on Jurisdictional Immunities of States and their Property (2004) (which has never entered into force) largely codifies customary international law, in places it goes further than existing customary international law in seeking to develop and clarify the law in the sphere of state immunity. The state of customary international law in respect of state immunity for employment disputes lacks some clarity and the UN Convention cannot be relied upon as reflecting customary international law for all employment matters.

24. Article 6 will not be breached if the rule of state immunity applied lies within the range of possible rules consistent with “current international standards”,²⁰ however it would be breached if state immunity is applied going beyond what is required by international law, as it would then be a disproportionate interference with Article 6 ECHR.

25. In the case of *Benkharbouche and Janah*, the Supreme Court had to consider whether sections 4(2)(b) and 16(1)(a) SIA are incompatible with the right to a fair trial in Article 6 ECHR. It was argued that these provisions unjustifiably barred access to a court for Ms Janah and Ms Benkharbouche to determine their claims in a way that went further than what was required by international law relating to state immunity in respect of employment disputes. We will therefore examine the extent of state immunity in respect of employment disputes through consideration of this case.

Litigation history: The judgment in *Benkharbouche and Janah*

26. The Supreme Court handed down judgment in the appeals in the joined cases of *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs* and *Secretary of State for Foreign and Commonwealth Affairs and Libya v Janah* on 18 October 2017.²¹

27. The facts of the cases relate to two domestic workers employed by foreign embassies in London. Both brought employment claims against their employers.

28. Ms Janah is a Moroccan national, recruited in Libya and employed as a domestic worker at the Libyan embassy in London. She is resident, not permanently resident, in the UK. She made a claim before the Employment Tribunal for various employment issues (failure to pay her the National Minimum Wage, breaches of the Working Time Regulations, failure to provide her with payslips or a contract of employment, unfair dismissal, discrimination and harassment).

¹⁹ *Benkharbouche and Janah* at paragraph 20.

²⁰ Case law on this has varied, for example in *Fogarty v United Kingdom* (2001) 34 EHRR 12 the ECHR found that the UK had not exceeded its margin of appreciation in granting immunity to the USA, as compared with *Cudak v Lithuania* (2010) 51 EHRR 14, which found that Lithuania had exceeded its margin of appreciation in granting state immunity to Poland in a way that did not reflect the restrictive doctrine of state immunity, in light of the International Law Commission’s draft articles.

²¹ [2017] UKSC 62.

29. Ms Benkharbouche is a Moroccan national, recruited in Iraq and employed as a domestic worker in the Sudanese embassy in London. She is now permanently resident in the UK. She made a claim before the Employment Tribunal for various employment issues (unfair dismissal, failure to pay her the National Minimum Wage, unpaid wages and holiday pay, breaches of the Working Time Regulations).

30. Both of their claims were dismissed in the lower courts as the employers were immune due to the operation of section 16(1)(a)²² (and in the case of Ms Janah also 4(2)(b)²³) of the State Immunity Act 1978. Part of the claims were allowed to proceed on the ground that they related to matters falling within the scope of EU law (discrimination, harassment and breaches of the Working Time Regulations) and were contrary to the right of access to a court guaranteed by Article 47 EU Charter. The Court of Appeal made a declaration of incompatibility under s. 4 HRA in respect of all the claims.

31. The Supreme Court gave a lengthy examination of the history and current state of the international law of state immunity, including the different theories and models of state immunity (absolute immunity or restrictive immunity). It concluded that there has been an international consensus for state immunity in some form for around 200 years, but that the only consensus as to the theory of the type of immunity, was around the restrictive doctrine (not the absolute immunity doctrine).

32. The Supreme Court then went on to examine the application of international law around immunities to employment contracts and employment disputes, each of which is dealt with separately below.

Section 16(1)(a) - Immunity from jurisdiction in respect of employment proceedings concerning employment of members of a diplomatic mission

33. In relation to employment matters, the type of immunity granted under sovereign immunity (as well as under diplomatic immunity and consular immunity) tends to depend on the type of employment and whether it is employment that is inherently linked to public or Government functions (such as employment as a diplomat or to undertake specific governmental functions), or whether it is a more general type of employment that doesn't involve any exercise of governmental functions.

34. Customary international law seems to support state immunity where employment is part of governmental authority, but not where it is a more regular form of employment which can be seen as somewhat of a grey zone. However, section 16(1)(a) SIA confers immunity from jurisdiction in respect of employment proceedings concerning employment of all members of a diplomatic mission or consular post—those whose roles involve an exercise of sovereign authority as for those whose employment does not involve any exercise of sovereign authority.

35. The Supreme Court, having examined the caselaw and state practice, concluded that the SIA “can be regarded as giving effect to customary international law only so far as it distinguishes between exercises of sovereign authority and acts of a private law character, and required immunity to be conferred on the former but not on the latter.

22 Immunity from jurisdiction in respect of employment proceedings concerning members of a diplomatic mission.

23 Immunity from jurisdiction in respect of employment proceedings concerning a person who at the time of their employment contract was not a UK national and was not resident in the UK.

There is no basis in customary international law for the application of state immunity in an employment context to acts of a private law character.”²⁴ Therefore whilst some types of employment covered by s 16(1)(a) might reflect the requirements of international law, s. 16(1)(a) went further than what was required by international law by covering all employees of a mission.

36. The Supreme Court concluded that there was “no international consensus... sufficient to found a rule of customary international law corresponding to section 16(1)(a) of the State Immunity Act 1978”.²⁵

Remedies available in respect of employment proceedings concerning foreign States

37. The type of immunity granted under international law can also depend on the type of employment dispute at issue—with greater immunity protection being granted to recruitment decisions and less to employment conditions; and different remedies being available. For example, under the VCDR, reinstatement could not be a remedy available for wrongful dismissal from a job at an embassy, as it would interfere with the right of the foreign State to decide who is to be employed in their diplomatic missions, but damages would be an appropriate remedy.

Section 4(2)(b) SIA—Immunity from jurisdiction in respect of employment proceedings relating to a contract of employment between a state and a person who at the time of the contract is neither a UK national nor habitually resident in the UK.

38. The Supreme Court noted that the immunity conferred by s. 4(2)(b) SIA (immunity from jurisdiction in respect of employment proceedings concerning a person who at the time of their employment contract was not a UK national and was not habitually resident in the UK) derives from the European Convention on State Immunity, but does not reflect customary international law.

39. The Supreme Court additionally noted that the UK, as forum State, “has duties as well as rights, and as a matter of domestic policy they extend to the protection of those lawfully living and employed in the United Kingdom.”²⁶

40. Therefore, to the extent that the approach taken in the European Convention on State Immunity is applied to relations between all States (and not only those States bound by the European Convention on State Immunity) s. 4(2)(b) SIA confers immunity beyond that which is required by international law. The Supreme Court therefore concluded that “section 4(2)(b) of the State Immunity Act 1978 is not justified by any binding principle of international law”.²⁷ As such s. 4(2)(b) SIA is an unjustified interference with the right to access a court, as protected by Article 6 ECHR (as well as the common law and the rule of law).

24 Paragraph 63 of the Supreme Court judgment.

25 Paragraph 72 of the Supreme Court judgment.

26 Paragraph 68 of the Supreme Court judgment.

27 Paragraphs 66 and 67 of the Supreme Court judgment.

The Supreme Court's Conclusion

41. In conclusion, the Supreme Court found that no principle of international law required the state immunity granted by sections 4(2)(b) and 16(1)(a) SIA, which were therefore a disproportionate interference with Article 6 ECHR, including as read with Article 14 ECHR in relation to discrimination based on nationality under s. 4(2)(b) SIA.

42. It found that “the employment of Ms Janah and Ms Benkharbouche were clearly not exercises of sovereign authority, and nothing about their alleged treatment engaged the sovereign interests of their employers. Nor are they seeking reinstatement in a way that would restrict the right of their employers to decide who is to be employed in their diplomatic missions.”²⁸ The Court went on to conclude that “as a matter of customary international law, therefore, their employers are not entitled to immunity as regards these claims. It follows that so far as sections 4(2)(b) or 16(1)(a) of the State Immunity Act confer immunity, they are incompatible with article 6” ECHR, including as read with Article 14 ECHR.²⁹

The ECHR Litigation

43. We also note the recent cases brought against the UK before the ECtHR in Strasbourg in relation to sovereign immunity and access to a court, in both the same case of *Benkharbouche and Janah v UK*,³⁰ and also *Buffett v UK*.³¹

44. In *Benkharbouche and Janah v UK*, the UK Government had conceded a breach of Article 6 ECHR as read with Article 14 ECHR. The ECtHR rejected the UK Government’s request to strike out the case based on a unilateral declaration. This was because there was no guarantee that the intended Remedial Order would provide an adequate remedy (as this would be at the discretion of the Employment Tribunal) and because the ECtHR considered that the compensation/costs offered as part of that deal (£20,000 damages and £2,500 costs each) were not adequate, in view of its assessment of the opportunities lost and costs of lengthy proceedings. The ECtHR awarded damages and costs to Ms Benkharbouche and Ms Janah.

45. In *Buffet v UK*, the ECtHR was invited to go wider in considering access to a court also to prohibit state immunity relating to an employment dispute between a French national security guard and the French Embassy in the UK. The ECtHR ruled this application inadmissible and struck it out. The Court considered that France was arguably entitled under international law to immunity from UK jurisdiction in relation to an employment dispute concerning a French national who was not permanently resident in the UK. He had not made a prima facie case that France is not entitled to immunity, and therefore he had not demonstrated that he is directly affected by the alleged incompatibility of the State Immunity Act 1978 with Articles 6 and 14 of ECHR. The ECtHR also noted in relation to France’s immunity that Buffet did not challenge the Employment Tribunal’s finding that he was performing a State function as a security guard.

28 Paragraph 76 of the Supreme Court judgment in *Benkharbouche and Janah*.

29 Paragraph 76 of the Supreme Court judgment in *Benkharbouche and Janah*. See also paragraph 79.

30 *Benkharbouche and Janah v UK*, ECtHR, judgment handed down 5 April 2022.

31 *Buffet v UK*, ECtHR, judgment handed down 28 April 2022.

3 Procedural Requirements

Compelling Reasons and Use of the Remedial Power

46. A Minister may only use the remedial power under the HRA to amend primary legislation if that Minister considers that there are “compelling reasons” to do so. The Government’s reasons for using a Remedial Order are set out in the statement of required information accompanying the proposed draft Order.

47. The “compelling reasons” cited by the Government include that legislative amendment of primary legislation is needed to remedy this incompatibility with Article 6 ECHR. Moreover, the Ministers “consider that the current pressure on the legislative timetable means that there is little prospect of finding suitable primary legislation to make an amendment in the near future.”³² The only option is then a Remedial Order.

48. The Government provided information that approximately 55 employment claims against diplomatic missions are currently before the courts, which have the potential to raise similar concerns with regard to the right of access to a court, as in *Benkharbouche and Janah*.³³ The required information noted that Algeria, Angola, Bahrain, Brunei, Burundi, Cyprus, Denmark, Egypt, France, Ghana, Guyana, Haiti, India, Kenya, Kuwait, Libya, Malaysia, Myanmar, Nigeria, Qatar, Saudi Arabia, South Africa, Spain, Trinidad and Tobago, Yemen, and Zambia have claimed immunity. The Government noted that “as long as the incompatibility remains, similar cases may be brought against the UK before the ECtHR, giving rise to risk that the government will be required to compensate individuals whose real complaint lies against another State”.

49. The Committee notes the significant delay since this judgment and the present date, and the not insignificant number of cases raising similar issues before the UK Courts, indicating that a not insignificant number of employees face similar hurdles in access in a court to determine an employment dispute.

50. The criteria of “compelling reasons” seem to be met. Given the 55 employment claims against diplomatic missions in London that are currently pending (albeit that some of these presumably would be compliant with Article 6, as was the case for Mr Buffet), it would seem that there is a good case for resolving this issue without further delay, and given the pressures on parliamentary time and the nature of the issue, it seems appropriate for being addressed through a Remedial Order.

Addressing declarations of incompatibility

51. In the “required information”, the Government has stated “a declaration of incompatibility does not create legal obligations for the government”. That is true, to a point. It is for Parliament and Government to decide what, if anything, to do about a declaration of incompatibility. That reflects the constitutional balance struck in the HRA and the important place of parliamentary sovereignty in the UK’s constitution. However, that sentence is also potentially misleading.

32 [Required Information](#)

33 [Required Information](#)

52. Where a declaration of incompatibility (under s. 4 HRA) or an ECtHR judgment makes a breach of the UK's human rights obligations clear then there are arguably legal obligations on the Government. The UK has obligations in international law to respect human rights, under both treaty law and customary international law. Where it becomes clear that UK law or practice does not respect human rights, then there is an obligation on the UK to remedy that situation, so that the UK is no longer in breach of its international obligations.

53. Therefore, where a declaration of incompatibility makes it clear that the UK Government is acting in breach of its international human rights law obligations, there are legal obligations in play—even if the legal obligations flow from international human rights law itself rather than specifically from the declaration of incompatibility. In the present case, Articles 1, 6, 13 and 14 ECHR require the UK to secure to those within its jurisdiction the right of access to a court, without discrimination.

54. Similarly, the Ministerial Code requires Ministers to act compatibly with the law, which should similarly require them to take steps to ensure their actions are compatible with the law.³⁴

55. Whilst the situation might be different if there was some doubt about whether the judgment actually did mean that the UK was in breach of its international obligations, where it is accepted that a judgment indicates an incompatibility between UK law and practice and the UK's legal obligations, then legal obligations do arise.

56. *The Government should be mindful of its legal obligations to respect human rights, both under UK law and under international law. The UK does have legal obligations, and Government Ministers have obligations under their own Ministerial Code, to comply with international human rights law and legal obligations flowing from it. To the extent that a Declaration of Incompatibility (or an ECtHR judgment) makes clear that the UK is in breach of its legal obligations, then the UK Government has a duty to take action to address such failings and to give effect to its legal obligations to respect and protect the human rights of people in the UK.*

Use of the Non-Urgent Procedure

57. Remedial Orders can be made by urgent or non-urgent procedure. The Government's reasons for proceeding by way of the non-urgent procedure are set out in the information accompanying the proposed Order. The Government does "not consider it necessary to make use of the urgent procedure", having regard to "the importance of the right affected by the incompatibility and the potential impact on individuals" as against "the need to allow the opportunity for parliamentary scrutiny".³⁵

58. The Government's reasons for proceeding by way of the non-urgent procedure (rather than urgent procedure) seem reasonable—they principally relate to the balance that needs to be struck between remedying the incompatibility for those affected and ensuring adequate time for parliamentary scrutiny.³⁶ We also note that the Government does not anticipate any similar cases in the near future.

34 Cabinet Office, [Ministerial Code](#), see for example paragraph 1.3

35 [Required Information](#)

36 See the [required information](#) from the Government under the heading "reasons for using the non-urgent procedure".

Delay in addressing this incompatibility

59. However, we also note the delay taken by the Government in proposing a resolution to this incompatibility—it is now five years since the Supreme Court judgment. As the Committee has highlighted in the course of other work, we have concerns at the delays in addressing human rights incompatibility and breaches in UK law. Whilst the Government is correct that “a declaration of incompatibility does not create legal obligations for the government”, where it is clear that UK law does not respect human rights, a delay by the UK Government in taking action to remedy a known breach of human rights, is effectively equivalent to a decision to continue to breach its international human rights obligations; in this case, the human rights of domestic workers employed in diplomatic missions and consular posts in the UK.

60. As ATLEU (Anti-Trafficking and Labour Exploitation Unit) said in their evidence to us, noting the delay between the Supreme Court judgment and the laying of the Remedial Order:

During that period a significant number of embassy employees will have been wrongly denied access to a court or Employment Tribunal, including service employees on low pay for whom prompt access to a remedy would have been very valuable.³⁷

61. A more structured system for more timely responses to human rights judgments, with better collaboration between the Government and Parliament to agree a timetable and method for addressing human rights judgments, in a more timely fashion would be a welcome improvement. We highlighted these issues in our recent report on “Human Rights Act Reform”.³⁸ In this respect we look forward to working further with the Government on ways to improve parliamentary scrutiny of the Government’s response to human rights judgments.

62. We also note the recent cases brought against the UK in Strasbourg in both the case of *Benkharbouche and Janah v UK*, and also *Buffett v UK*, in relation to sovereign immunity and access to a court, at least one of which would not have been necessary had this incompatibility been remedied sooner.

63. Overall, we are satisfied that there are compelling reasons to proceed by Remedial Order and that this is a valid use of the remedial power. We consider that the non-urgent procedure strikes a reasonable balance between the competing considerations

37 The Anti-Trafficking and Labour Exploitation Unit (“ATLEU”) ([DSI0001](#))

38 Joint Committee on Human Rights, Thirteenth Report of Session 2021–2022, *Human Rights Act Reform*, HC 1033, HL Paper 191, See for example, our Recommendations at paragraph 121 “A more structured system should be established to ensure strong collaboration between Government and Parliament in taking timely action to resolve human rights violations. Following a declaration of incompatibility, the responsible Minister should write to the Committee setting out his proposed timetable and method for addressing that incompatibility. The Committee can then consider and agree that timetable with the Government, and can then help to hold both Government and other actors to account in taking timely action to address such violations” and at paragraph 131 “A more structured system should be established to ensure strong collaboration between Government and Parliament in taking timely action to resolve human rights violations. Following an adverse ECtHR judgment, the responsible Minister should write to this Committee setting out his proposed timetable and method for resolving a judgment. We can then consider and agree that timetable with the Government, and can help to hold both Government and other actors to account in taking timely action to address such violations”.

of the need to avoid undue delay in remedying the incompatibility with human rights standards and the need to afford a proper opportunity for parliamentary scrutiny of changes to primary legislation.

64. However, we are concerned at the length of time that it has taken successive Foreign Secretaries to act to remove this incompatibility, which has clearly affected a not insignificant number of domestic workers in the UK for whom prompt access to a court would have been very valuable.

65. *We consider that better procedures should be put in place, with a structured system for setting timescales and methods, in agreement between Parliament and the Government, for addressing situations where UK laws are known to breach the human rights of people in the UK.*

Criteria of the Joint Committee on Statutory Instruments

66. The Criteria of the JCSI are broadly met, subject to two minor drafting clarifications:

- a) In the final paragraph of the preamble to the Remedial Order, it cites the enabling powers as “paragraph 1(1)(a), 1(b) and (3) of Schedule 2”. The reference to “1(b)” isn’t right—it should read either “(1)(b)” or “1(1)(b)”.
- b) The reference to the date in Articles 1(1) and 1(3) should use the same phrasing to ensure consistency and to avoid confusion. The words “on which” should either be added to the wording in Art 1(1) or deleted from the wording in Art 1(3).

4 Does the proposed Order address the incompatibility & does the proposed Order omit additional provisions which it should have contained?

Government proposals

67. The purpose of the Government's proposal is to remedy the incompatibility of sections 4(2)(b) and 16(1)(a) of the SIA with Article 6 ECHR, including as read with Article 14 ECHR. The breach of Article 6 ECHR identified by the Supreme Court relates to the immunity granted to States under the SIA in respect of employment disputes, where such immunity goes beyond that required by international law, and therefore constitutes a disproportionate and unjustified interference with the employees right of access to a court, protected under Article 6 ECHR.

The amendment to section 4(2)(b) SIA

68. In relation to section 4(2)(b) (Immunity from jurisdiction in respect of employment proceedings relating to a contract of employment between a state and a person who at the time of the contract is neither a UK national nor habitually resident in the UK), the Government proposes to address this incompatibility, by amending the SIA to limit the scope of s. 4 (2)(b) SIA to solely cover States party to the European Convention on State Immunity.

69. As noted by ATLEU in their evidence to us, this amendment “clearly removes the incompatibility in respect of persons employed by foreign states other than ECSI signatory states”.³⁹ We agree with ATLEU.

70. However, we note that ATLEU “consider there are credible arguments that section 4(2)(b) remains incompatible with Articles 6 and 14 ECHR in respect of employees of ECSI signatory states”.⁴⁰ We have not seen any evidence that that the judgments of the ECHR or domestic courts have, as yet, gone so far as to conclude that compliance with regional state immunity Conventions, in relations as between states parties to those Conventions, is incompatible with the right of access to a court. Moreover, we have not seen anything to suggest that the ECHR would conclude that the Council of Europe's own regional state immunity Convention is incompatible with the right of access to a court under Article 6 ECHR. Whilst we feel unable to conclude that section 4(2)(b), as amended, would be incompatible with the right of access to a court under Article 6 ECHR, we nonetheless invite the Government to consider this point in its response.

The amendment to section 16 SIA

71. The Government proposes amending section 16 SIA to limit the immunity of States in respect of employment claims brought by the staff of diplomatic missions and

39 The Anti-Trafficking and Labour Exploitation Unit (“ATLEU”) ([DS10001](#))

40 The Anti-Trafficking and Labour Exploitation Unit (“ATLEU”) ([DS10001](#))

consular posts to the immunities required under customary international law. Section 16, as amended, would specify that the State would be immune in respect of employment contracts concerning staff employed as a diplomatic agent or consular officer, or employment contracts entered into in the “exercise of sovereign authority” [s. 16(1)(aa)(i)], or where the State conduct complained of was in the “exercise of sovereign authority” [s. 16(1)(aa)(ii)]. The amended section 16 SIA would therefore make clear that this immunity would not extend to the employment of all employees of that foreign State.

Section 16(1)(aa)(i): An employment contract entered into in the exercise of sovereign authority

72. It remains to be seen how an employment contract entered into “in the exercise of sovereign authority” will be interpreted, and therefore whether it might cover some roles such as driver or domestic servant—although the clear expectation is that it will only cover such roles if there is a “sovereign authority” element to them. As ATLEU noted in their evidence to us:

We hope that courts and tribunals will give a restrictive interpretation to [section 16(1)(aa)(i)], consistent with modern international case law, so that only employees whose functions are genuinely connected with the discharge of sovereign functions are prevented from bringing claims.⁴¹

73. The drafting leaves some room for interpretation and is therefore capable of some legal uncertainty. Given the ambiguity in the international case law, it may be that allowing for “sovereign authority” to be assessed on a case-by-case basis and developed through case-law is a sensible approach to ensure the necessary flexibility. It may be that the hope is that the courts will apply this in a way that ensures the correct balance is struck in only according state immunity to the extent required by customary international law (and thus avoiding a potential future breach of the right to access a court under Article 6 ECHR). However, leaving this clarity to be provided by the courts may leave employers and employees unclear as to whether a given employment contract is or is not an exercise of “sovereign authority” and thus leave them unclear as to their rights.

74. The Government should consider whether it is possible for the drafting in section 16(1)(aa)(i) to give greater legal certainty to employees and employers as to which roles would and would not normally be considered to be covered as an employment contract which the State entered into “as an exercise of sovereign authority”.

Section 16(1)(aa)(ii): Situations where the State conduct complained of was in the exercise of sovereign authority

75. In relation to the second limb, section 16(1)(aa)(ii) (immunity from employment proceedings where the State engaged in the conduct complained of in the exercise of sovereign immunity), there is potentially greater scope for confusion. As ATLEU set out:

We consider the scope of section 16(1)(aa)(ii) to be uncertain. We can see a risk that states will seek to rely on an expansive interpretation of this provision in order to assert immunity in respect of a range of acts that are alleged to breach UK employment protections, e.g. unlawful acts of

41 The Anti-Trafficking and Labour Exploitation Unit (“ATLEU”) ([DSI0001](#))

dismissal, discrimination or harassment by the head of mission or diplomatic agents. In our view this provision would need to be given a very restrictive interpretation by courts or tribunals in order for it to be compatible with customary international law on state immunity and Article 6 ECHR. For example, acts by an employing state that were genuinely connected with imperative reasons of state security might fall into this category.⁴²

76. *There is some doubt as to whether limb 16(1)(aa)(ii) grants greater immunity than that required by customary international law and therefore may not be compatible with the right to access a court under Article 6 ECHR. The Government should provide detailed analysis to justify why this limb is required by customary international law and to explain the sorts of conduct that it envisages it catching. Alternatively, the Government should consider redrafting limb 16(1)(aa)(ii) to ensure it goes no further than the immunity required by customary international law.*

The amendment to section 13 SIA

77. International law, include the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations specifies that a State has a right to freely appoint members of its diplomatic or consular staff. This precludes courts from ordering specific remedies in employment cases, such as reinstatement.

78. As a consequence of the amendments proposed to s. 16 SIA, some employees of a diplomatic mission or a consular post would be able to bring employment claims. However, in accordance with international law, including the VCDR and the VCCR, the UK Courts should not be able to order reinstatement as part of such proceedings, as it would interfere with the right of the foreign State to decide who is to be employed in their diplomatic missions.⁴³ As a consequence of the changes to section 16 SIA, the Government therefore proposes amending s. 13 SIA to limit the remedies available in such employment disputes to exclude reinstatement, given the rule of international law in the VCDR and the VCCR, that a UK court cannot order a foreign state to employ a specific person in its Embassy.

Conclusion

79. The proposed draft Remedial Order would make targeted amendments to the SIA which would have the effect that a person would only be barred from accessing a court to determine their employment dispute with their employer where that was required by international law.

80. These changes would have effect retrospectively, as of the date of the Supreme Court judgment, meaning that all subsequent cases should be able to benefit from the change in law.

81. *The draft Order addresses the incompatibilities identified in the case of Benkharbouche and Janah. Subject to the Government reflecting on the specific concerns relating to legal certainty and clarity of the drafting concerns new sections 16(1)(aa)(i) and (ii), we recommend that the Government lay the draft order before both Houses.*

42 The Anti-Trafficking and Labour Exploitation Unit ("ATLEU") (DS10001)

43 Article 7 of the [Vienna Convention on Diplomatic Relations 1961](#), and Article 19 of the [Vienna Convention on Consular Relations of 1963](#).

5 Other Matters arising

82. The scope of this Remedial Order is properly restricted to the incompatibilities identified in section 4(2)(b) and 16(1)(a) SIA concerning access to courts in employment matters. However, to the extent that other provisions of the SIA (or indeed the Diplomatic Privileges Act 1964 or Consular Relations Act 1968) may diverge from the strict requirements of international law, then they may similarly offend the right of access to a court under Article 6 ECHR.

83. We wrote to the Foreign Secretary asking for her analysis and clarification as to whether there are areas where the State Immunity Act 1978, Diplomatic Privileges Act 1964 and Consular Relations Act 1968 confer more immunity than that required by international law, and could therefore raise similar concerns to that identified in the *Benkharbouche and Janah* case. We asked to see her reasoning as to whether there is a risk that any other immunities conferred by those Acts are incompatible with the right of access to a court under Article 6 ECHR.⁴⁴ We have not yet received a response from the Foreign Secretary, we understand due to communication issues within the Department. We look forward to a considered response on these issues in due course.

84. This report was drafted before the Supreme Court handed down its judgment in the case *Basfar v Wong* [2022] UKSC 20. In *Basfar v Wong* the Supreme Court held that exploiting a domestic worker by compelling her to work in conditions of modern slavery is not comparable to an ordinary employment relationship of working for a diplomat, and therefore that Mr Basfar did not enjoy diplomatic immunity in respect of this employment relationship. Whilst this does not deal directly with sovereign immunity, it highlights related concerns in relation to diplomatic immunity, as we have raised in our correspondence and in this Report. We therefore look forward to the Government's analysis in response to our letter of May as to how similar provisions, relating to diplomatic immunity, interact with the right of access to a court.

85. The Foreign Secretary should remain vigilant and, where relevant, proactively review the state of UK law giving effect to immunities to ensure that immunities do not go further than the extent necessary, and therefore do not unjustifiably interfere with human rights in the UK, and in particular the right of access to a court.

44 [The letter to the Foreign Secretary relating to the State Immunity Act 1978](#), dated 19 May 2022 can be found in the Annex

Conclusions and recommendations

Procedural Matters

1. The Committee welcomes the Government's action in proposing the draft Remedial Order to remedy the incompatibility in the State Immunity Act 1978 with the right to access a Court, protected under the Convention rights to a fair trial and to non-discrimination. (Paragraph 5)

Procedural Requirements

2. *The Government should be mindful of its legal obligations to respect human rights, both under UK law and under international law. The UK does have legal obligations, and Government Ministers have obligations under their own Ministerial Code, to comply with international human rights law and legal obligations flowing from it. To the extent that a Declaration of Incompatibility (or an ECtHR judgment) makes clear that the UK is in breach of its legal obligations, then the UK Government has a duty to take action to address such failings and to give effect to its legal obligations to respect and protect the human rights of people in the UK.* (Paragraph 56)
3. Overall, we are satisfied that there are compelling reasons to proceed by Remedial Order and that this is a valid use of the remedial power. We consider that the non-urgent procedure strikes a reasonable balance between the competing considerations of the need to avoid undue delay in remedying the incompatibility with human rights standards and the need to afford a proper opportunity for parliamentary scrutiny of changes to primary legislation. (Paragraph 63)
4. However, we are concerned at the length of time that it has taken successive Foreign Secretaries to act to remove this incompatibility, which has clearly affected a not insignificant number of domestic workers in the UK for whom prompt access to a court would have been very valuable. (Paragraph 64)
5. *We consider that better procedures should be put in place, with a structured system for setting timescales and methods, in agreement between Parliament and the Government, for addressing situations where UK laws are known to breach the human rights of people in the UK.* (Paragraph 65)

Drafting

6. *The Government should consider whether it is possible for the drafting in section 16(1)(aa)(i) to give greater legal certainty to employees and employers as to which roles would and would not normally be considered to be covered as an employment contract which the State entered into "as an exercise of sovereign authority".* (Paragraph 74)
7. *There is some doubt as to whether limb 16(1)(aa)(ii) grants greater immunity than that required by customary international law and therefore may not be compatible with the right to access a court under Article 6 ECHR. The Government should provide detailed analysis to justify why this limb is required by customary international law*

and to explain the sorts of conduct that it envisages it catching. Alternatively, the Government should consider redrafting limb 16(1)(aa)(ii) to ensure it goes no further than the immunity required by customary international law. (Paragraph 76)

8. *The draft Order addresses the incompatibilities identified in the case of Benkharbouche and Janah. Subject to the Government reflecting on the specific concerns relating to legal certainty and clarity of the drafting concerns new sections 16(1)(aa)(i) and (ii), we recommend that the Government lay the draft order before both Houses. (Paragraph 81)*
9. The Foreign Secretary should remain vigilant and, where relevant, proactively review the state of UK law giving effect to immunities to ensure that immunities do not go further than the extent necessary, and therefore do not unjustifiably interfere with human rights in the UK, and in particular the right of access to a court. (Paragraph 85)

Appendix: Correspondence from the Chair to Foreign Secretary

Dear Liz Truss,

The Committee was pleased to see the steps that you and your Department are taking to resolve the declaration of incompatibility in relation to sections 4(2)(b) and 16(1)(a) of the State Immunity Act 1978.

The changes proposed to s. 16 and 13 State Immunity Act relate to immunity in respect of employment matters concerning employees in diplomatic missions and consular posts. Could you please clarify how the amended provisions of s. 16 and 13 SIA relate to the requirements of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, as reflected in the DPA and the CRA?

The scope of this Remedial Order is properly restricted to the incompatibilities identified in section 4(2)(b) and 16(1)(a) of the State Immunities Act concerning access to courts in employment matters. However, to the extent that immunities granted by other provisions of the State Immunity Act 1978, the Diplomatic Privileges Act 1964 or the Consular Relations Act 1968 may diverge from the strict requirements of international law, then similar reasoning would seem to apply and such provisions may similarly offend Article 6 ECHR were they to prevent access to the courts in a way that went beyond what was required by international law.

We would be grateful if you could provide us with your assessment as to whether there are areas where the State Immunity Act 1978, the Diplomatic Privileges Act 1964 or the Consular Relations Act 1968 confer more immunity than that required by international law. We would be grateful to see your reasoning as to whether there is a risk that immunities conferred by those Acts are incompatible with the right of access to a court, protected under Article 6 ECHR, as well as the common law. We request that you send us this information by Friday 10 June.

Yours sincerely,

Harriet Harman

Formal minutes

Wednesday 6 July 2022

Hybrid Meeting

Members present:

Harriet Harman MP, in the Chair

Joanna Cherry MP

Lord Dubs

Lord Henley

Baroness Ludford

Baroness Massey of Darwen

Lord Singh of Wimbledon

David Simmonds MP

Baroness Chisholm of Owlpen

Florence Eshalomi MP

Proposal for a draft State Immunity Act 1978 (Remedial) Order 2022: State Immunity & The Right of Access to a Court

Draft Report (*Proposal for a draft State Immunity Act 1978 (Remedial) Order 2022: State Immunity & The Right of Access to a Court*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 84 read and agreed to.

A Paper was appended to the Report as Appendix 1.

Summary agreed to.

Resolved, That the Report be the Second Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Adjournment

Adjourned till 13 July 2022 at 2.45pm.

Declaration of interests

Baroness Chisholm of Owlpen

- No relevant interests to declare

Lord Dubs

- No relevant interests to declare

Lord Henley

- No relevant interests to declare

Baroness Ludford

- No relevant interests to declare

Baroness Massey of Darwen

- No relevant interests to declare

Lord Singh of Wimbledon

- No relevant interests to declare

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DSI numbers are generated by the evidence processing system and so may not be complete.

- 1 Anti-Trafficking and Labour Exploitation Unit ("ATLEU") ([DSI0001](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2022–23

Number	Title	Reference
1st	Legislative Scrutiny: Public Order Bill	HC351- HL16

Session 2021–22

Number	Title	Reference
1st	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill	HC 90 HL 5
2nd	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)	HC 331 HL 23
3rd	The Government's Independent Review of the Human Rights Act	HC 89 HL 31
4th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments	HC 478 HL 37
5th	Legislative Scrutiny: Elections Bill	HC 233 HL 58
6th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People	HC 451 HL 73
7th	Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality	HC 764 HL 90
8th	Proposal for a draft Bereavement Benefits (Remedial) Order 2021: discrimination against cohabiting partners	HC 594 HL 91
9th	Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement	HC 885 HL 112
10th	Legislative Scrutiny: Judicial Review and Courts Bill	HC 884 HL 120
11th	Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery	HC 964 HL 135
12th	Legislative Scrutiny: Nationality and Borders Bill (Parts 1, 2 and 4) – Asylum, Home Office DecisionMaking, Age Assessments, and Deprivation of Citizenship Orders	HC 1007 HL 143
13th	Human Rights Act Reform	HC 1033 HL 191

Number	Title	Reference
1st Special Report	The Government response to covid-19: fixed penalty notices: Government Response to the Committee's Fourteenth Report of Session 2019–21	HC 545
2nd Special Report	Care homes: Visiting restrictions during the covid-19 pandemic: Government Response to the Committee's Fifteenth Report of Session 2019–21	HC 553
3rd Special Report	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill: Government Response to the Committee's First Report	HC 585
4th Special Report	The Government response to covid-19: freedom of assembly and the right to protest: Government Response to the Committee's Thirteenth Report of Session 2019–21	HC 586
5th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order): Government Response to the Committee's Second Report	HC 724
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911
8th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People: Government Response to the Committee's Sixth Report	HC 983
9th Special Report	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing: Government Response to the Committee's Third Report of Session 2019–21	HC 1198
10th Special Report	Legislative Scrutiny: Nationality and Borders Bill: Government Responses to the Committee's Seventh, Ninth, Eleventh and Twelfth Reports	HC 1208

Session 2019–21

Number	Title	Reference
1st	Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 146 HL 37
2nd	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148 HL 41
3rd	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343 HL 59
4th	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256 HL 62
5th	Human Rights and the Government's response to COVID-19: the detention of young people who are autistic and/or have learning disabilities	HC 395 (CP 309) HL 72

Number	Title	Reference
6th	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 HL 90
7th	The Government's response to COVID-19: human rights implications	HC 265 (CP 335) HL 125
8th	Legislative Scrutiny: The United Kingdom Internal Market Bill	HC 901 HL 154
9th	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill	HC 665 (HC 1120) HL 155
10th	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 (HC 1127) HL 164
11th	Black people, racism and human rights	HC 559 (HC 1210) HL 165
12th	Appointment of the Chair of the Equality and Human Rights Commission	HC 1022 HL 180
13th	The Government response to covid-19: freedom of assembly and the right to protest	HC 1328 HL 252
14th	The Government response to covid-19: fixed penalty notices	HC 1364 HL 272
15th	Care homes: Visiting restrictions during the covid-19 pandemic	HC 1375 HL 278
1st Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313
2nd Special Report	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21	HC 1127
3rd Special Report	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill: Government Response to the Committee's Ninth Report of Session 2019–21	HC 1120
4th Special Report	Black people, racism and human rights: Government Response to the Committee's Eleventh Report of Session 2019–21	HC 1210
5th Special Report	Democracy, freedom of expression and freedom of association: Threats to MPs: Government Response to the Committee's Third Report of Session 2019	HC 1317
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911