

Rt Hon the Lord Foster of Bath, Chair,
Justice and Home Affairs Committee
House of Lords
London
SW1A 0PW

MoJ ref: SUB134172

20 May 2026

Dear Lord Foster,

IMPLEMENTATION OF *SW v UK*

I am writing to inform you that on 18 May a draft Remedial Order to implement the European Court of Human Rights (ECtHR) judgment in *SW v UK* (application no. 87/18, June 2021) was laid before Parliament.

Background

The applicant in the case of *SW v UK* was a social worker who acted as a professional witness in childcare proceedings in the Family Court.

The Family Court judge made adverse findings in his judgment of October 2014 as to the professional conduct of SW without giving the applicant adequate opportunity to respond, and directed that the judgment be sent to the local authority to which she was then assigned. He also advised that his findings should be shared with other local authorities where she had worked, and with relevant professional bodies. The applicant's assignment with the local authority was subsequently terminated.

In November 2016, the Court of Appeal¹ found that the process by which the judge arrived at these criticisms of the applicant was "manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law".

The Court of Appeal set aside the findings made against the applicant. However, the applicant was unable to obtain damages due to section 9(3) HRA, which prevents the payment of damages for judicial acts done in good faith except in very limited circumstances (which do not include a breach of Article 8).

In 2021, the ECtHR found there had been violations of the applicant's rights under Article 8 (right to respect for family and private life) and Article 13 (right to an effective remedy). The Article 13

¹ *W (A Child)*, Re [2016] EWCA Civ_1140 (17 November 2016)

violation was based on the fact that the applicant did not have access to an effective remedy at the national level capable of addressing the substance of her complaint and by which she could obtain relief. The ECtHR awarded a sum in damages, which has been paid.

The Remedial Order

We laid a proposal to amend section 9(3) of the HRA using a Remedial Order on 17 July 2025, triggering a 60-day scrutiny period during which the Joint Committee on Human Rights (JCHR) examined the proposal.

In its report, published in October 2025, the Committee agrees that the use of a Remedial Order to implement the SW judgment is appropriate and makes a number of drafting recommendations.

The JCHR's report expressed concerns that the Remedial Order was too narrowly drafted to prevent future breaches of Article 13 where judicial acts infringe upon Convention rights, and that making piecemeal amendments to s.9(3) for individual cases is unsustainable. Therefore, the Committee recommended that we introduce broader, principled exceptions to section 9(3), or that we consider removing the provision entirely.

Having examined these concerns carefully, we consider the scope of the draft Remedial Order sufficient to address the incompatibility identified by the ECtHR in *SW v UK*, whilst respecting the principle of judicial immunity. We however note this concern and, whilst the draft Remedial Order has not been amended as recommended, we will undertake a wider review of the operation of s.9(3) separately to the implementation of this judgment.

We have, however, taken on a number of the more minor drafting suggestions from the Committee.

This draft Remedial Order has been laid under the non-urgent procedure.

We are responsible for ensuring that the whole of the UK complies with the judgment and our proposed amendment would have UK-wide extent and application. We have written to inform the Lady Chief Justice of England and Wales, the Lady Chief Justice of Northern Ireland, the Lord President of the Court of Session, and the President of the Supreme Court about this proposed Remedial Order, and we have notified Justice Ministers in the devolved governments.

If you require any further information, please do feel free to get in touch.



JAKE RICHARDS MP