



House of Lords
House of Commons

Joint Committee on Human Rights

Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report

First Report of Session 2026–27

HC 325 / HL Paper 19

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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Summary

The Ministry of Justice has laid before Parliament a draft remedial order under the Human Rights Act 1998, which would amend the Human Rights Act itself in response to the judgment of the European Court of Human Rights in the case of *SW v United Kingdom*.

In its judgment in that case, the court held that the applicant's right to an effective remedy had been breached, because she could not get compensation when a judge in the family court acted in a procedurally wrongful way.

The applicant was a social worker who had been a witness in proceedings before a family court. In his judgment, the judge made serious findings about her conduct without giving her notice or the opportunity to respond. The findings were sent to the local authorities where the applicant had worked and to the relevant professional bodies.

The Court of Appeal held that the procedural failings in the family court breached the applicant's right to respect for her private life under Article 8 of the European Convention on Human Rights (ECHR). But she was not entitled to compensation, because section 9(3) of the Human Rights Act 1998 restricts the circumstances in which damages can be awarded for breaches arising from judicial acts done in good faith.

The European Court of Human Rights decided that this restriction on compensation breached her rights under article 13 of the ECHR, the right to an effective remedy.

To address this breach, the remedial order would amend section 9(3) of the Human Rights Act to provide that damages can potentially be awarded for judicial acts which breach procedural rights under article 8 of the ECHR.

In our first report on the proposed remedial order, we welcomed the proposal to address the breach of the ECHR identified in the *SW* case. We considered that the proposed remedial order would be validly made, and that it would prevent a recurrence of the breach of article 13 if the particular circumstances of the *SW* case were ever to be repeated. We considered, however, that the proposed remedial order was too narrowly drafted to prevent breaches of article 13 in other foreseeable circumstances where a judicial act causes a breach of ECHR rights.

The draft remedial order is in largely the same terms as the proposed remedial order on which we previously reported. The government considers that wider changes to the Human Rights Act would require significant consultation. The government therefore proposes that to avoid delay, a remedial order should be made in narrow terms to address the specific circumstances of the *SW* case, but it undertakes to carry out a wider review of how section 9(3) of the Human Rights Act is operating.

We continue to be concerned that the draft remedial order is in unnecessarily narrow terms. But as the draft remedial order would remove the specific incompatibility identified in the *SW* case, the Committee recommends that both Houses approve it. We expect the government to keep us informed about the progress of its wider review, and to commit to amending section 9(3) at the earliest opportunity to give effect to the outcome of that review.

1 Introduction

The draft remedial order

1. The Ministry of Justice has laid before Parliament a draft remedial order, which will address limits on the courts' ability to award damages for breaches of human rights when the breach was the result of a judicial act.¹
2. Under section 9(3) of the Human Rights Act 1998, damages in respect of judicial acts are only available in limited circumstances. In *SW v United Kingdom*,² the European Court of Human Rights held that on the facts of that case, those limits on the availability of damages breached the right to an effective remedy under article 13 of the European Convention on Human Rights (ECHR).
3. The applicant in the case was a witness in proceedings before the family court. In his judgment in those proceedings, the judge made findings about the witness's conduct without giving her notice or giving her the opportunity to respond. The Court of Appeal held that this was contrary to the procedural requirements of Article 8 of the ECHR (the right to respect for private life).³ The witness was unable to claim damages in relation to the breach, because section 9(3) of the Human Rights Act 1998 precluded such a claim.
4. The draft remedial order addresses the judgment of the European Court of Human Rights in the *SW* case, by amending section 9(3) of the Human Rights Act 1998 to allow a claim for damages to be brought in relation to a judicial act where there has been a breach of the procedural requirements of article 8 of the ECHR.

1 Ministry of Justice, [Response to the Joint Committee on Human Rights' eighth report of session 2024–2026: Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), 18 May 2026

2 [SW v United Kingdom](#), Application no. 87/18, 22 June 2021

3 [Re W \(A Child\) \[2016\] EWCA Civ 1140](#)

The power to make a remedial order

5. Where a provision of legislation has been found to be incompatible with the ECHR under section 4 of the Human Rights Act 1998, a minister may make an order under section 10 of the Act to make such amendments to the legislation as the minister considers necessary to remove the incompatibility.
6. Remedial orders are powerful legislative instruments which can be used to amend primary legislation.⁴ There are safeguards to ensure the power is used appropriately, including that a remedial order can only be made where the minister has “compelling” reasons for doing so,⁵ and that the order must be approved by each House.⁶
7. Making a remedial order is usually a two-stage process.⁷ The timetable and requirements are set out in Schedule 2 to the Human Rights Act 1998:
 - a. A draft of the proposed order must be laid before Parliament for 60 days, together with the additional ‘required information’.⁸
 - b. If the government decides to proceed with the remedial order, it will then lay a draft order accompanied by a statement responding to any representations it received about the remedial order and explaining what changes, if any, have been made to the draft in consequence.⁹ The draft order must be laid before Parliament for 60 days, after which the order must be approved by a resolution of each House.¹⁰
8. This report relates to the second stage of the process. The Joint Committee on Human Rights reported on the first stage on 27 October 2025 after the government laid a draft of the proposed order.¹¹

4 Human Rights Act 1998, section 10(2) and (3), and Schedule 2, paragraph 1(2)

5 Human Rights Act 1998, section 10(2)

6 Human Rights Act 1998, Schedule 2, paragraph 2

7 Most remedial orders are made using the ‘non-urgent’ procedure, which is a two-stage process. There is also a procedure which can be used in urgent cases (Schedule 2, paragraphs 2(b) and 4)

8 Human Rights Act 1998, Schedule 2, paragraph 3(1). For the purposes of Schedule 2, the 60-day period does not include any time during which Parliament is dissolved or prorogued or both Houses of Parliament are adjourned for more than four days (see Schedule 2 paragraph 6)

9 Human Rights Act 1998, Schedule 2, paragraphs 2 and 3(2)

10 Human Rights Act 1998, Schedule 2, paragraph 2(1)

11 [Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), Eighth Report of Session 2024–26 (HC 1406/HL Paper 195)

The role of the Joint Committee on Human Rights

9. The role of the Joint Committee on Human Rights in relation to remedial orders is set out in the Standing Orders of each House.
10. The Standing Orders of the House of Commons require the committee to report to that House whether we recommend that a draft remedial order should be approved. We may also report on any other matter arising from our consideration of the proposal.¹² In addition, we are required to report on the technical compliance of the draft order with the procedural requirements of Schedule 2 to the Human Rights Act 1998, and determine whether the special attention of the House should be drawn to the remedial order on any of the grounds specified in the Standing Orders relating to the Joint Committee on Statutory Instruments.¹³
11. In the House of Lords, we are charged with considering remedial orders and reporting on them to that House, as well as performing such functions as would otherwise be carried out by the Joint Committee on Statutory Instruments.¹⁴
12. When considering a draft remedial order, the committee usually looks at:
 - whether the conditions for making a remedial order under section 10 of and Schedule 2 to the Human Rights Act 1998 have been met
 - in particular, whether the government has “compelling reasons” to remedy the incompatibility by way of remedial order
 - whether the procedure adopted by the government for making the remedial order (urgent or non-urgent) is appropriate in the circumstances
 - whether the government has produced the “required information” to the committee and responded effectively to any other requests for information from the committee
 - whether the draft remedial order would remedy the incompatibility with ECHR rights identified by the courts.

12 House of Commons, [Standing Orders: Public Business 2026](#), HC 1745, S.O. No. 152B(3)

13 House of Commons, [Standing Orders: Public Business 2026](#), HC 1745, S.O. No. 152B(2)(c)

14 House of Lords, [Standing Orders of the House of Lords Relating to Public Business](#), HL Paper 232, S.O. 73(1)(c); House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, 26th Edition](#), paragraph 10.25

13. We are also required to consider the criteria applied by the Joint Committee on Statutory Instruments.¹⁵ That committee can draw a statutory instrument to the special attention of each House on a number of grounds, including that:
- the statutory instrument imposes a charge on the public revenues or contains provisions requiring payments to be made to a public authority
 - there appears to have been unjustifiable delay in the publication or laying of the statutory instrument before Parliament
 - there appears to be doubt whether the statutory instrument is intra vires or it appears to make some unusual or unexpected use of powers conferred by the statute under which it is made
 - for any special reason the statutory instrument's form or purport calls for elucidation
 - the statutory instrument's drafting appears to be defective
 - there are any other grounds which do not impinge on the statutory instrument's merits or the policy behind it.

Timeline

14. The government laid the proposed order on 17 July 2025.¹⁶ The committee issued a call for evidence on 23 July 2025, asking for responses by 26 September 2025. The committee was grateful to those who submitted responses, but decided not to publish them because they appeared to fall outside the terms of reference in the call for evidence.
15. The committee published its report on the proposed order on 27 October 2025.¹⁷ The government published its response on 18 May 2026.¹⁸

15 House of Commons, [Standing Orders: Public Business 2026](#), HC 1745, S.O. No. 152B(2)(c); House of Lords, [Standing Orders of the House of Lords Relating to Public Business](#), HL Paper 232, S.O. 73(c); House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 26th Edition, para 10.25

16 Ministry of Justice, [A proposal for a Remedial Order to amend the Human Rights Act 1998](#), 17 July 2025

17 [Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), Eighth Report of Session 2024–26 (HC 1406/HL Paper 195)

18 Ministry of Justice, [Response to the Joint Committee on Human Rights' eighth report of session 2024–2026: Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), 28 April 2026

16. The position agreed between Parliament and successive governments is that the government will respond to any report from a select committee within two months. If a response is not possible within two months, “a longer delay may be considered permissible when those circumstances have been explained to the committee concerned”.¹⁹ The government did not respond to our first report on the proposed order until it laid the draft remedial order before Parliament on 18 May 2026.

17. **CONCLUSION**

We remind the department that Parliament expects the government to respond to the report of a committee within two months. If the department is not able to provide a response within two months, it must write to the committee to explain the delay.

18. In accordance with the usual practice of our committee, we did not issue a further call for written evidence in relation to the draft remedial order.

19 Erskine May’s [Treatise on the Law, Privileges, Proceedings and Usage of Parliament](#), 25th edition, 2019, para 38.54

2 Background

Damages under the Human Rights Act 1998

19. Section 7 of the Human Rights Act 1998 provides that a person who claims a public authority has acted incompatibly with an ECHR right, and who is a victim of that act, may bring proceedings against the authority.
20. Under section 8 of the Act, if a court finds that a public authority has acted incompatibly with a Convention right, it may grant an appropriate remedy. It may award damages if it is satisfied that the award is necessary to afford just satisfaction, having regard to the principles applied by the European Court of Human Rights in relation to compensation.
21. In the case of breaches of the ECHR arising from a judicial act, however, section 9(3) of the Human Rights Act 1998 limits the available remedies:

In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than—

(a) to compensate a person to the extent required by Article 5(5) of the Convention, or

(b) to compensate a person for a judicial act that is incompatible with Article 6 of the Convention in circumstances where the person is detained and, but for the incompatibility, the person would not have been detained or would not have been detained for so long.

22. Section 9(3)(b) was inserted by the Human Rights Act 1998 (Remedial) Order 2020,²⁰ which our predecessor committee considered in its Fifteenth Report of Session 2017–19²¹ and its Second Report of Session 2019–21.²²
23. The 2020 remedial order was made to address the judgment of the European Court of Human Rights in *Hammerton v United Kingdom*.²³ In that case, the court held that under section 9(3) as it stood at the time, the domestic remedies available to the applicant in relation to his complaint under article 6 (the right to a fair trial) were not fully “effective” for the purposes of article 13 of the ECHR (the right to an effective remedy). This was

20 [SI 2020/1160](#)

21 [HC 1457, HL Paper 228](#)

22 [HC 148, HL Paper 41](#)

23 [Application no. 6287/10](#), 17 March 2016

because the remedies were not capable of affording adequate redress for the prejudice that he had suffered because of the lengthened deprivation of liberty caused by the absence of legal representation in his case.

Litigation history

24. In its judgment in *SW v United Kingdom*,²⁴ the European Court of Human Rights found that on the facts of the case, there had been a further breach of Article 13 because of the limitation on claims for damages in section 9(3) of the Human Rights Act 1998.

Domestic proceedings

25. In *Re W (A Child)*,²⁵ the Court of Appeal found that accusations of professional misconduct against a witness made by a family court judge breached her rights under Article 8 of the ECHR (the right to respect for private life).
26. The case concerned a judgment of 17 October 2014 during care proceedings, in which the judge rejected allegations of sexual abuse with respect to certain family members.
27. The judgment included criticisms of an individual social worker, known as SW. The judge found that SW was involved in a joint enterprise to obtain evidence to prove the sexual abuse allegations, irrespective of any underlying truth and the relevant professional guidelines; that SW was the principal instigator of this joint enterprise and had drawn the other professionals in; that SW had lied to the court about an important aspect of the investigation; and that SW had subjected the person making the allegations to a high level of emotional abuse over a sustained period as a result of their professional interaction.
28. Although the judgment was not published, the judge directed that it should be sent urgently to the local authority which was then employing SW, and advised that his findings should be shared with other local authorities where she had worked and with the relevant professional bodies.
29. The Court of Appeal held that SW's rights under article 8 had been breached. It was clear that the private life rights of SW under article 8 would be breached if the criticisms in the judgment were allowed to stand. The finding of breach of Article 8 did not depend on whether the judgment was published.

24 [SW v United Kingdom](#), Application no. 87/18, 22 June 2021

25 [\[2016\] EWCA Civ 1140](#)

30. The court found that the process was manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness under article 8. The case against SW fell entirely outside the issues that were before the court, the matters of potential criticism had not been mentioned at all during the hearing, and they had never been put to SW at any point. The court emphasised that the case was highly unusual, and the circumstances where such a breach would arise would be rare.²⁶
31. The court said that the appropriate remedy was to remove from the judgment any reference to the matters that the judge had found against SW that fell outside the parameters of the care proceedings and that had not been raised properly, or at all, during the hearing. The effect would not just be to remove words from a published judgment, but to set aside the judge's findings on those matters so that they no longer stood or had any validity for any purpose. The effect would be as if those findings had never been made.²⁷

Proceedings in the European Court of Human Rights

32. SW considered bringing a claim for compensation under the Human Rights Act 1998. She was advised, however, that a claim would have no real prospect of success under section 9 of the Act, because it would be difficult to establish that the actions of the Family Court judge were not in good faith.²⁸ She proceeded to make an application to the European Court of Human Rights.
33. In its judgment, the European Court of Human Rights agreed with the Court of Appeal that there had been a breach of article 8. The case that the judge found to be "proved" against the applicant fell entirely outside the issues that were properly before the court. That case had not been put to the applicant, or even mentioned, during the hearing. Moreover, those procedural shortcomings were not offset by any effective counter-balancing measures. In the Court's view the judge's direction that his adverse findings be sent to the local authorities and relevant professional bodies, without giving the applicant an opportunity to meet those findings in the course of the hearing, interfered unlawfully and disproportionately with her right to respect for her private life under article 8.²⁹
34. The Court also held that there had been a violation of SW's right to an effective remedy under article 13 of the ECHR. In its view, the judgment of the Court of Appeal did not give the applicant appropriate and sufficient

26 [Re W \(A Child\) \[2016\] EWCA Civ 1140](#), [97]-[100]

27 [Re W \(A Child\) \[2016\] EWCA Civ 1140](#), [119]-[120]

28 [SW v United Kingdom](#), Application no. 87/18, 22 June 2021, paragraphs 21-23

29 [SW v United Kingdom](#), Application no. 87/18, 22 June 2021, paragraphs 60-64

redress for her complaint under article 8. The parties had agreed that she would only have been entitled to damages for misfeasance in public office if she could show that the judge had knowingly or recklessly abused his power and either intended to cause her harm, or was recklessly indifferent to the probability of causing her harm. The parties had also agreed that she could not have made a claim for damages under the Human Rights Act 1998, because any attempt to establish the necessary lack of good faith on the part of the judge would have been unlikely to succeed.

35. There had therefore been a violation of article 13, because SW did not have access to an effective remedy capable of addressing the substance of her article 8 complaint and by virtue of which she could obtain appropriate relief.³⁰ The Court awarded the applicant 24,000 euros. It took into account that she was denied the opportunity to bring a claim for a substantial amount of damages. Although in the absence of a full hearing the Court could not know whether such a claim would have succeeded, it was appropriate to make an award to recognise the loss of opportunity to bring the claim.³¹

Effect of the draft remedial order

36. To address this finding, the draft remedial order inserts a new section 9(3)(c) into the Human Rights Act 1998. This creates a third exception to the general rule in section 9(3) that damages may not be awarded in proceedings under the Act in respect of a judicial act done in good faith. Section 9(3), as amended by the proposed remedial order, reads in its entirety:

In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than—

(a) to compensate a person to the extent required by Article 5(5) of the Convention,

(b) to compensate a person for a judicial act that is incompatible with Article 6 of the Convention in circumstances where the person is detained and, but for the incompatibility, the person would not have been detained or would not have been detained for so long, or

(c) to compensate a person for a judicial act that is incompatible with Article 8 of the Convention on the ground that the act was done in such a procedurally defective way as to amount to a breach of the requirements of procedural fairness under that Article.

30 [SW v United Kingdom](#), Application no. 87/18, 22 June 2021, paragraphs 65–74

31 [SW v United Kingdom](#), Application no. 87/18, 22 June 2021, paragraphs 80–83

3 The draft remedial order

Procedural matters

“Compelling reasons”

37. The committee accepted in its first report on the proposed remedial order that the minister had “compelling reasons” for making the order, bearing in mind the government’s view that there was little prospect of finding suitable primary legislation to make an amendment in the near future.³²

38. **CONCLUSION**

The committee accepts the government’s view that there is a “compelling reason” to make a remedial order.

Non-urgent procedure

39. The committee also accepted in its first report that the non-urgent procedure was appropriate, bearing in mind that the government expected there would be a limited number of cases that would be affected by the order.³³

40. **CONCLUSION**

The committee accepts that this is not a case where it would be appropriate to use the urgent procedure.

“Required information”

41. The Human Rights Act 1998 provides that a draft remedial order may not be laid unless there has first been laid a document containing a draft of the proposed order and the ‘required information’.³⁴ The ‘required information’ consists of an explanation of the relevant incompatibility and a statement

32 [Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), Eighth Report of Session 2024–26 (HC 1406/HL Paper 195), paragraphs 47–50

33 [Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), Eighth Report of Session 2024–26 (HC 1406/HL Paper 195), paragraph 51

34 Paragraph 3(1) of Schedule 2.

of the reasons for making a remedial order.³⁵ A draft may not be laid for 60 days thereafter. If representations were made during that 60-day period, there should also be a statement summarising those representations and explaining how the proposed order has been changed as a result of those representations.³⁶

42. In this case, a draft of the proposed order was laid on 17 July 2025 containing the ‘required information’.³⁷ A statement was laid on 18 May 2026 summarising the representations made in our first report on the proposed remedial order and explaining how the proposed order has been changed, as discussed further below.³⁸

43. **CONCLUSION**

The committee is content that the “required information” has been provided.

Drafting points

44. The committee is pleased to note that the draft order incorporates some of the amendments which we recommended in our previous report.³⁹
45. The committee observes that one of the amendments which we recommended has not been made, and that the new section 9(3)(c) continues to include the words “in such a procedurally defective way”.⁴⁰ The department explains in its proposal why it has taken the view that those words should not be removed:

“The inclusion of these words is intended to highlight that not every procedural defect breaches the requirements of procedural fairness. We believe this distinction will be important to the judiciary, and it therefore remains in the draft Remedial Order.”

35 Paragraph 5 of Schedule 2.

36 Paragraph 3(2) of Schedule 2.

37 Ministry of Justice, [A proposal for a Remedial Order to amend the Human Rights Act 1998](#), July 2025

38 Ministry of Justice, [Response to the Joint Committee on Human Rights’ eighth report of session 2024–2026: Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), 28 April 2026

39 [Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), Eighth Report of Session 2024–26 (HC 1406/HL Paper 195), paragraphs 54–56 and 59; Ministry of Justice, [Response to the Joint Committee on Human Rights’ eighth report of session 2024–2026: Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), 28 April 2026, pages 7–8

40 [Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity](#), Eighth Report of Session 2024–26 (HC 1406/HL Paper 195), paragraphs 57–58

46. The committee continues to question whether these words are necessary. As we previously observed, they are potentially confusing because they appear to add a statutory gloss to what constitutes a breach of the procedural requirements of article 8. But the point is not so significant that it needs to be drawn to the special attention of each House.

47. **CONCLUSION**

There are no points in the draft remedial order to which the special attention of each House should be drawn.

The breadth of the draft remedial order

48. The amendments to the Human Rights Act 1998 in the draft remedial order continue to be limited to cases reflecting the narrow circumstances of the *SW* case. The committee agrees with the observations of its predecessor that minimal compliance with adverse judgments will generally be inadequate:

“When deciding what remedial action is required the Committee expects the Government to demonstrate a commitment to full implementation rather than minimal compliance with court judgments. The Committee therefore expects the remedial action proposed by the Government not only to prevent a repeat of identical violations in the future but also to prevent future violations which are predictable as a result of the judgment in question.

“The Committee considers that the powers to make remedial orders in the Human Rights Act 1998 are wide enough to permit the use of Remedial Orders for this purpose.”⁴¹

49. In its first report on the proposed draft remedial order, the Committee concluded that in the light of the judgments of the European Court of Human Rights in the *Hammerton* and *SW* cases, it could not realistically be argued that section 9(3) would be compatible with article 13 if it were amended in the very limited manner that the government proposed. There would continue to be occasions where article 13 would require damages to be available for a breach of the Convention resulting from a judicial act, but where the limited exceptions in section 9(3) would not apply. We considered it was not tenable to continue making piecemeal amendments to section 9(3) in response to the facts of individual cases.

41 Joint Committee on Human Rights, [Enhancing Parliament’s Role in Relation to Human Rights Judgments](#), Fifteenth Report of Session 2009–10, HL Paper 85/HC 455, 26 March 2010, paragraphs 168–170; Annex, “Guidance for Departments on Responding to Court Judgments on Human Rights”, paragraphs 27–28.

50. The committee therefore recommended that the remedial order should be amended either to create principled exceptions to section 9(3), or to remove the provision in its entirety and make the necessary consequential changes.

51. The government has chosen to continue with the drafting approach followed in the proposed order, limiting the scope of the amendment to cases raising an identical point to that in the *SW* case. The government explains:

“Given the effect this amendment will have on the workings of the judiciary, our officials have engaged with [the] Judicial Office throughout this process. We understand that their key concerns relate to possible impacts on judicial immunity, particularly the risk that a broad amendment may incentivise people to bring claims, impacting on judicial decision-making and court resourcing. Any widening of the circumstances in which a remedy of damages is available in respect of a judicial act done in good faith should therefore be approached with caution.

“Wider changes to the HRA, such as those suggested in the JCHR report, should involve significant consultation with relevant parties, including the judiciary and devolved governments, as broadening the exceptions in section 9(3) or removing the provision in its entirety may have unintended consequences. For these reasons, the draft Remedial Order has not been expanded. However, we will undertake a wider review of how section 9(3) HRA is operating separate to the implementation of this judgment, which should not be delayed.”

52. In this case, as the committee observed in its first report, the effect of the remedial order is to make the statute book arbitrary. The government has not offered any reason of principle for including such limited exceptions in section 9(3), beyond general concerns about avoiding unintended consequences.

53. In particular, the government has given no reason for thinking the European Court of Human Rights would consider the effects of the amended section 9(3) to be compatible with article 13 in circumstances not covered by the narrow exceptions, such as a claim relating to a substantive rather than procedural breach of article 8. In such a case a claimant would still be forced to bring proceedings in the European Court of Human Rights to obtain recompense, even though the government has not explained how it might defend such proceedings. It is therefore hard to see why the draft remedial order is limited to procedural breaches, unless the explanation is simply that the government is aiming for minimal compliance.

54. The committee notes, however, that the government proposes to carry out a wider review of how section 9(3) is operating, which will involve significant consultation with the judiciary and others. The committee acknowledges

that it is necessary to consider the wider implications of any more extensive legislative change. It would have been preferable if that review had taken place earlier, so that the remedial order could take its findings into account. The European Court of Human Rights gave its judgment in the *SW* case five years ago, which should have given the government enough time to consider the matter more broadly. It might also not be straightforward to identify a suitable legislative vehicle to make further amendments to section 9(3).

55. But now that so much time has passed since the *SW* judgment, the committee accepts that it would be undesirable for there to be any further delay in making the amendments necessary to respond to the judgment.

56. **CONCLUSION**

Although the draft remedial order is narrowly drafted, it would remove the specific incompatibility identified in the *SW* case.

57. **RECOMMENDATION**

Given the passage of time since the judgment in the *SW* case, we recommend that both Houses should approve the draft remedial order.

58. **RECOMMENDATION**

The committee welcomes the government's commitment to review how section 9(3) of the Human Rights Act 1998 is operating. The government should carry out that review as quickly as possible, keep the committee informed about its progress, and commit to making the necessary amendments to section 9(3) at the earliest opportunity.

Conclusions and recommendations

Introduction

1. We remind the department that Parliament expects the government to respond to the report of a committee within two months. If the department is not able to provide a response within two months, it must write to the committee to explain the delay. (Conclusion, Paragraph 17)

The draft remedial order

2. The committee accepts the government's view that there is a "compelling reason" to make a remedial order. (Conclusion, Paragraph 38)
3. The committee accepts that this is not a case where it would be appropriate to use the urgent procedure. (Conclusion, Paragraph 40)
4. The committee is content that the "required information" has been provided. (Conclusion, Paragraph 43)
5. There are no points in the draft remedial order to which the special attention of each House should be drawn. (Conclusion, Paragraph 47)
6. Although the draft remedial order is narrowly drafted, it would remove the specific incompatibility identified in the SW case. (Conclusion, Paragraph 56)
7. Given the passage of time since the judgment in the SW case, we recommend that both Houses should approve the draft remedial order. (Recommendation, Paragraph 57)
8. The committee welcomes the government's commitment to review how section 9(3) of the Human Rights Act 1998 is operating. The government should carry out that review as quickly as possible, keep the committee informed about its progress, and commit to making the necessary amendments to section 9(3) at the earliest opportunity. (Recommendation, Paragraph 58)

Formal minutes

Wednesday 17 June 2026

Members present

Lord Alton of Liverpool, in the Chair

Tom Gordon

Baroness Hamwee

Afzal Khan

Lord Murray of Blidworth

Lord Rook

Lord Sewell of Sanderstead

Alex Sobel

Euan Stainbank

Sir Desmond Swayne

Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report

Draft Report (*Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 58 read and agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House of Lords and the House of Commons.

Ordered, That the Chair make the Report to the House of Lords and that Sir Desmond Swayne make the Report to the House of Commons.

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

Adjournment

Adjourned till Wednesday 1 July at 2.00 p.m.

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 2024–26

Number	Title	Reference
9th	Draft Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Remedial) Order 2025: Second Report	HC 1438
8th	Proposal for a Remedial Order to amend the Human Rights Act 1998: Judicial Immunity	HC 1406
7th	Transnational repression in the UK	HC 681
6th	Forced Labour in UK Supply Chains	HC 633
5th	Legislative Scrutiny: Crime and Policing Bill	HC 830
4th	Legislative Scrutiny: Border Security, Asylum and Immigration Bill	HC 789
3rd	Legislative Scrutiny: Mental Health Bill	HC 601
2nd	Accountability for Daesh crimes	HC 612
1st	Proposal for a Draft Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Remedial) Order 2024	HC 569
8th Special	Draft Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Remedial) Order 2025: Second Report: Government Response	HC 1697
7th Special	Crime and Policing Bill: Government Response	HC 1439
6th Special	Transnational repression in the UK: Government Response	HC 1405
5th Special	Forced Labour in UK Supply Chains: Government Response	HC 1404

Number	Title	Reference
4th Special	Legislative Scrutiny: Border Security, Asylum and Immigration Bill: Government Response	HC 1315
3rd Special	Legislative scrutiny: Mental Health Bill: Government Response	HC 1217
2nd Special	Accountability For Daesh Crimes: Government Response to the Committee's Second Report of Session 2024 - 2025	HC 1211
1st Special	Human rights and the proposal for a "Hillsborough Law": Government Response to the Committees Third Report of Session 2023 - 2024	HC 739