



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

April 2026



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**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**

Presented to Parliament pursuant to paragraph 3(2) of Schedule 2 to the
Human Rights Act 1998

April 2026



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Background to the draft Remedial Order

Introduction

On 17 July 2025, the government announced its intention to amend section 9 of the Human Rights Act 1998 (HRA) by Remedial Order to allow an award of damages in a new set of circumstances, in order to implement the judgment of the European Court of Human Rights (ECtHR) in *SW v UK* (application no. 87/18).

A document containing a draft of the proposed Remedial Order was laid before Parliament on 17 July 2025 in accordance with paragraph 3(1) of Schedule 2 to the HRA, setting out the reasons for the proposal – the “required information” of paragraph 3(1)(a) of Schedule 2 to the HRA. The Joint Committee on Human Rights (the Committee) considered the proposal and published its report on 27 October 2025. This paper constitutes the government’s response to that report.

This section summarises the representations made about the draft of the proposed Remedial Order and the drafting changes made as a result, as required under paragraph 3(2) of Schedule 2 to the HRA.

The incompatibility

The applicant in *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 the applicant without giving her adequate opportunity to respond, and directed that the judgment be sent to the local authority to which she was then assigned. The judge also advised that his findings 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.

The Court of Appeal found that the criticism of the applicant contained in the judgment of the Family Court would breach her rights under Article 8 (right to respect for family and private life) of the European Convention on Human Rights if the judgment was allowed to stand in the final form proposed.¹ The Court of Appeal found the process by which the judge arrived at his criticisms to have been “manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common

¹ *W (A Child), Re* [2016] EWCA Civ 1140 (17 November 2016)

law”, and ordered that the adverse findings against the applicant be set aside and removed from the judgment.

However, the applicant was unable to obtain damages because section 9(3) of the HRA restricts the circumstances in which damages can be awarded in respect of a judicial act done in good faith.

In 2021, the ECtHR held that there had been a violation of the applicant’s Article 8 rights. The Court further found a breach of Article 13 (right to an effective remedy) on the basis 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.

Having regard to this finding of the ECtHR, ministers decided to exercise their power under section 10 of, and Schedule 2 to, the HRA to amend section 9(3) HRA by Remedial Order to address the incompatibility with Article 13. On 17 July 2025 the government laid before Parliament a proposed Remedial Order to amend section 9(3) of the HRA. The proposed Remedial Order addresses the judgment of the European Court of Human Rights in *SW v UK*, 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 under Article 8 of the Convention.²

Summary of Representations

The government is grateful to the Committee for its consideration of the draft of the proposed Remedial Order and its conclusions and recommendations.

Procedural requirements

- 1. In our view, the power in section 10 can in principle be used to amend provisions such as section 9(3) of the Human Rights Act 1998 which are not integral to the mechanisms by which the Act gives effect to Convention rights in domestic law. We leave open whether, as a matter of law, a remedial order could be used to make more fundamental changes to those mechanisms. (Paragraph 46)*
- 2. The Committee agrees with the government that it is appropriate to rectify the incompatibility as expeditiously as possible. Although Article 13 will only rarely require damages to be awarded as a result of judicial acts, it is undesirable that there should continue to be a legislative impediment to the award of damages in those unusual circumstances. As a matter of general constitutional principle, it is desirable for amendments to primary legislation to be made by way of a Bill. The Committee notes,*

² Proposal for implementation of *SW v UK* judgment - GOV.UK

however, the government's view that there is little prospect of finding a suitable Bill which could be used to make the amendment in the near future, and accepts that in the circumstances this may be a "compelling reason" to proceed by way of remedial order. (Paragraph 50)

- 3. The Committee accepts that this is not a case where it would be appropriate to use the urgent procedure. (Paragraph 51)*

The government welcomes the Committee's agreement that there are compelling reasons to proceed by Remedial Order, that this is a valid use of the power to make a Remedial Order, and that the non-urgent procedure is appropriate in this case.

Other drafting points

- 4. It is not clear to us that the parenthetical words "or on grounds including the ground" in new section 9(3)(c) have the intended effect. They would seem to mean, for example, that compensation would be available if a judicial act breaches Article 8 in any way as long as one of the grounds is that the requirements of procedural fairness were breached. (Paragraph 54)*
- 5. Officials in the Ministry of Justice have indicated that this is not what was intended, and that they propose to remove the parenthetical words from the next draft of the order. The intention was to clarify that damages would be available for procedural breaches of Article 8 (and only procedural breaches) even if there were also substantive breaches of Article 8. The Committee agrees that the parenthetical words should be removed. (Paragraph 56)*

The government has taken into careful consideration the Committee's point that the parenthetical phrase "or on grounds including the ground" could be read as unintentionally allowing compensation for any breach of Article 8 as long as one ground relates to procedural fairness. The intention is that damages should be available for a procedural breach of Article 8 even if it is accompanied by a substantive breach of Article 8, but not that an additional amount may be awarded for the substantive breach in such cases. The government agrees that the parenthetical words could be read in this manner, and has therefore removed the phrase from the draft Remedial Order.

- 6. We question why the words "in such a procedurally defective way" appear in new section 9(3)(c). This would seem to duplicate the effects of the reference to "a breach of the requirements of procedural fairness", and is also a potentially unhelpful gloss on the language of the judgment in SW. (Paragraph 57)*

7. *We consider the drafting could be simplified, to refer simply to compensation for a judicial act that is incompatible with Article 8 on the ground that the act breached the requirements of procedural fairness under that Article. (Paragraph 58)*

The government has carefully considered the Committee's question as to the purpose of the words "in such a procedurally defective way" and its recommendation to consider if the drafting could be simplified. 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.

8. *Finally, we draw the department's attention to some minor drafting and typographical points:*

a. In footnote (a) and the Explanatory Note, the word "application" in the reference to the SW case should begin with a capital letter, as it does in the equivalent place in SI 2020/1160.

b. In new section 9(3)(c), the drafting would be clearer if the word "it" were replaced by "the act", to refer explicitly to the judicial act. (Paragraph 59)

The government accepts these recommendations and has amended the draft Remedial Order accordingly.

Does the proposed order address the incompatibility?

9. *In the absence of any such justification, the remedial order should be amended to repeal section 9(3) altogether. We consider that the power in section 10 could in principle be used to do this and make appropriate consequential amendments. It would be open to the Secretary of State to consider that section 9(3) is incompatible with Article 13 having regard to the Court's finding in the SW case, and that repealing section 9(3) is necessary to remove that incompatibility. (Paragraph 76)*
10. *The Committee considers that, in the light of the judgments of the European Court of Human Rights in the Hammerton and SW cases, it cannot 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 proposes. 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. (Paragraph 77)*

11. It is not tenable to continue making piecemeal amendments to section 9(3) in response to the facts of individual cases. The remedial order should therefore 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. (Paragraph 78)

The government appreciates the Committee raising this matter, and the concern that the proposed Remedial Order is too narrowly drafted to prevent breaches of Article 13 in circumstances different to those in the *SW* case.

The focus in *SW v UK* was on the requirements of procedural fairness under Article 8 of the ECHR. We therefore consider the scope of the proposed Remedial Order appropriate to address the incompatibility identified by the ECtHR.

Given the effect this amendment will have on the workings of the judiciary, our officials have engaged with 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.

Conclusion: the terms of the draft Remedial Order

Having considered the arguments and recommendations of the Committee, alongside the principle of judicial immunity, the government has decided it is appropriate to continue with the current approach for the proposed Remedial Order, implementing some of the drafting changes recommended by the Committee.

The draft Remedial Order that we have laid before Parliament is set out in the following section of this document. It amends section 9(3) HRA to enable damages to be awarded under the HRA in respect of a judicial act done in good faith where the judicial act is incompatible with Article 8, on the ground that it was done in such a procedurally defective way as to amount to a breach of the requirements of procedural fairness under that Article.

Draft Order laid before Parliament under paragraph 2(a) of Schedule 2 to the Human Rights Act 1998 (c. 42) for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2026 No.

HUMAN RIGHTS

The Human Rights Act 1998 (Remedial) Order 2026

Made - - - - *******
Coming into force

It appears to the Secretary of State, following a finding of the European Court of Human Rights in proceedings against the United Kingdom^(a), that section 9 of the Human Rights Act 1998^(b) is incompatible with an obligation of the United Kingdom arising from the Convention^(c).

The Secretary of State considers that there are compelling reasons for proceeding by way of a remedial order^(d) to make such amendments to section 9 of the Human Rights Act 1998 as the Secretary of State considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of that Schedule.

Accordingly, the Secretary of State makes the following Order, in exercise of the powers conferred by section 10(2) of, and paragraph 1(1)(b) and (3) of Schedule 2 to, the Human Rights Act 1998.

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Human Rights Act 1998 (Remedial) Order 2026.
- (2) This Order comes into force on the day after the day on which it is made.
- (3) This Order extends to England and Wales, Scotland and Northern Ireland.

Amendment of the Human Rights Act 1998

- 2.—(1) In section 9(3) of the Human Rights Act 1998 (damages for judicial acts)—
 - (a) omit the “or” at the end of paragraph (a), and

(a) *S.W. v United Kingdom* (Application no. 87/18), 22 June 2021.
(b) 1998 c. 42; section 9 was amended by section 10(6) of, and paragraph 39 of Schedule 4 to, the Justice (Northern Ireland) Act 2002 (c. 26) and S.I. 2020/1160.
(c) See section 21(1) of the Human Rights Act 1998 for the meaning of “the Convention”.
(d) See section 21(1) of the Human Rights Act 1998 for the definition of “remedial order”.

(b) at the end of paragraph (b) insert “, 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.”.

(2) The amendments made by paragraph (1) apply in relation to judicial acts occurring before (as well as to those occurring after) this Order comes into force.

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Human Rights Act 1998 (“the HRA”) to address a finding of the European Court of Human Rights of a breach of Article 13 of the European Convention on Human Rights (“the Convention”) in the case of *S.W. v United Kingdom* (Application no. 87/18).

Article 2 of the Order amends section 9(3) of the HRA. Section 9(3) provides that in proceedings under the HRA in respect of a judicial act done in good faith, damages may not be awarded other than in limited circumstances concerning incompatibility with Article 5 or Article 6 of the Convention.

Article 2 of the Order adds a further exception to the prohibition on the award of damages in section 9(3). It enables damages to be awarded where a judicial act 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.

Article 2 of the Order also provides that the amendments to section 9(3) of the HRA apply to judicial acts that occurred before, as well as after, the date on which the Order comes into force.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen

EXPLANATORY MEMORANDUM TO
THE HUMAN RIGHTS ACTS 1998 (REMEDIAL) ORDER 2026
2026 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Human Rights.

2. Declaration

- 2.1 Jake Richards MP, Parliamentary Under Secretary of State at the Ministry of Justice, confirms that this explanatory memorandum meets the required standard.
- 2.2 Rob Linham, Deputy Director for Rights and Public Law at the Ministry of Justice, confirms that this explanatory memorandum meets the required standard.

3. Contact

- 3.1 Farzanar Yasmin at the Ministry of Justice, email: humanrights@justice.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the instrument

4. Overview of the instrument

What does the legislation do?

- 4.1 This instrument is being laid in response to the European Court of Human Rights (ECtHR) judgment in *SW v UK* (Application no. 87/18) to allow for damages in respect of a judicial act done in good faith where the judicial act is incompatible with Article 8 of the European Convention on Human Rights (ECHR) on the ground that it was done in such a procedurally defective way as to amount to a breach of the requirements of procedural fairness under that article.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument is the United Kingdom.
- 4.3 The territorial application of this instrument is the United Kingdom.

5. Policy context

What is being done and why?

- 5.1 The applicant in *SW v UK* was a social worker who had acted as a professional witness in childcare proceedings. The judge in those proceedings, without giving the applicant opportunity to respond, made a number of critical comments about her professional conduct in his judgment and directed that the judgment be sent to the local authority to which she was currently assigned, and advised that his findings be shared with relevant professional

bodies. The applicant's assignment with the local authority was subsequently terminated. The Court of Appeal subsequently set aside the relevant findings on the basis that if left standing there would be a breach the applicant's rights under Article 8 (right to respect for private and family life). The applicant was, however, unable to obtain damages in the domestic courts because section 9(3) of the HRA restricts the circumstances in which damages can be awarded in proceedings under the HRA in respect of a judicial act done in good faith. The ECtHR found that the judgment of the Court of Appeal did not afford the applicant sufficient remedy for her complaint and found a breach of Article 13 (right to an effective remedy), together with Article 8. We are required under Article 46 of the ECHR to implement judgments of the ECtHR against the UK.

To address the Article 13 violation identified by the ECtHR in *SW v UK*, this Remedial Order amends section 9(3) of the HRA.

5.2 The Remedial Order will have the effect that:

- in proceedings in respect of a judicial act done in good faith;
- where the judicial act is incompatible with Article 8 on the ground that it was done in such a procedurally defective way as to amount to a breach of the requirements of procedural fairness under that Article;

a financial remedy may be awarded to the person to compensate for the breach of Article 8.

What was the previous policy, and how is this different?

5.3 Section 9(3) of the HRA provides that damages may not be awarded under the Act in respect of a judicial act done in good faith, otherwise than to compensate a person to the extent required by Article 5(5) or 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. The Remedial Order will add a further exception to the bar in section 9(3) of the HRA.

6. Legislative and legal context

How has the law changed?

6.1 This instrument is being laid in response to the ECtHR judgment in *SW v UK* (Application no. 87/18) which concerned the availability of damages under section 9(3) of the HRA. The Remedial Order will add a further exception to the bar in section 9(3) of the HRA, such that damages may be awarded to compensate a person where a judicial act, done in good faith, is incompatible with Article 8 of the ECHR on the grounds that it was done in such a procedurally defective way as to amount to a breach of the requirements of procedural fairness under that Article.

Why was this approach taken to change the law?

6.2 The relevant incompatibility identified by the ECtHR concerned section 9(3) of the HRA and we consider that amendment to that provision will be necessary for implementation. Section 10 of the HRA provides that if it appears to a Minister that, having regard to a

finding of the ECtHR in proceedings against the United Kingdom, a provision of legislation is incompatible with an obligation of the UK arising from the ECHR, and the Minister considers there are compelling reasons for doing so, the legislation may be amended by Remedial Order to remove the incompatibility.

- 6.3 Section 10(2) of the HRA requires that a Minister must consider there to be “compelling reasons” for making an amendment by way of a Remedial Order. We consider there is little prospect of finding suitable primary legislation to make an amendment in the near future. We consider that the nature of the incompatibility contributes to there being compelling reasons for making the necessary legislative change swiftly. Therefore, it is considered that a Remedial Order using the non-urgent procedure is the most appropriate legislative vehicle for implementing this judgment promptly while allowing parliamentary scrutiny of the measures proposed.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The Government has not conducted a separate consultation exercise as it would not be proportionate to do so for a targeted amendment which is required to implement a ECtHR judgment and meet our international obligations.

8. Applicable guidance

- 8.1 The Government will not be publishing guidance on this amendment.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because we have assessed the likely number of future awards for damages under this amendment to be low and the financial impact too small to justify preparing a full Impact Assessment for this instrument.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no significant impact on business, charities or voluntary bodies.
9.3 The legislation does not impact small or micro businesses.
9.4 There is no significant impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The effect of this amendment will be monitored on an ongoing basis by the Ministry of Justice. Any declarations of incompatibility made by the domestic courts and judgments of the ECtHR on related matters will be included in the Government's annual reports to the Joint Committee on Human Rights.
10.2 The instrument does not include a statutory review clause.

Part Three: Statements and matters of particular interest to Parliament

11. Matters of special interest to the Joint Committee on Human Rights

- 11.1 A document containing a draft of a proposed Remedial Order and the required information has been laid before Parliament in accordance with paragraph 3(1) of Schedule 2 to the HRA, and representations have been received from the Joint Committee on Human Rights. This draft Remedial Order is accompanied by a statement containing a summary of the representations made and details of the changes made as a result, laid in accordance with paragraph 3(2) of that Schedule.

12. European Convention on Human Rights

- 12.1 Jake Richards MP, the Parliamentary Under Secretary of State for Justice has made the following statement regarding human rights:

“In my view the provisions of the Human Rights Act 1998 (Remedial) Order 2026 are compatible with the Convention rights.”

13. The European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 13.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020, or the Retained EU Law (Revocation and Reform) Act 2023 (“the relevant European Union Acts”).

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