Dear Edward,

Proposed Draft Human Rights Act 1998 (Remedial) Order 2018

1. I am writing in relation to the proposed draft Human Rights Act 1998 (Remedial) Order 2018. The Committee welcomes the Government’s efforts to remedy the areas of the statute book that are not compatible with the UK’s human rights obligations. Moreover, the Committee is grateful for the useful information contained in the Ministry of Justice’s paper of July 2018 that accompanies this proposed Order, in the paper entitled “A proposal for a Remedial Order to amend the Human Rights Act 1998”.

2. The case to which this Remedial Order relates (Hammerton v UK 2016) arose in the context of contempt of court proceedings. However, the incompatibility arises from the fact that the Human Rights Act 1998 restricts the availability of damages for judicial acts done in good faith. The Committee would like to have some assurance that this Remedial Order is not drafted so narrowly that there may be other circumstances in which this very same provision of the Human Rights Act results in breaches of Article 13 ECHR (right to an effective remedy) for the very same reason (i.e. because it prevents an effective remedy for breaches of rights which occur through judicial acts done in good faith), such that future cases also have to go to the Strasbourg Court for resolution.

3. We would appreciate some clarifications, to supplement the information provided and to assist in our consideration of this Order. In particular, under Schedule 2 of the Human Rights Act 1998 the Minister is required to include, with the proposed draft Remedial Order, a statement as to the reasons for making the Order in those terms. In this light we would like to understand better the Minister’s understanding of the scale of the problem and his choice in framing the Order so narrowly in Article 2 of the draft Order.
In particular:

a. Is the Justice Secretary satisfied that Article 13 ECHR (right to an effective remedy) is given effect adequately in UK law? Could the Justice Secretary please explain his position and reasoning?

b. Can the Justice Secretary reassure the Committee that there are not any other circumstances where a judicial act could, even when made in good faith, violate a person's Convention rights, in circumstances where there might be no effective remedy in the absence of damages?

c. In particular, can the Justice Secretary please explain to the Committee why the proposed draft Remedial Order is limited to proceedings for contempt of court? Does the Justice Secretary consider that there are no other proceedings in which a judicial act could (in good faith) breach a person’s human rights?

d. Can the Justice Secretary please explain to the Committee why the proposed draft Remedial Order is limited only to breaches of Article 6 that relate to a lack of legal representation? Does the Justice Secretary consider that other breaches of Article 6 ECHR are less serious? What other reason is there for considering that other breaches of Article 6 ECHR would not ever need to be remedied by an award of damages in order for there to be an effective remedy?

e. Can the Justice Secretary please explain to the Committee why the proposed draft Remedial Order is limited only to breaches that lead to a person being committed to prison (or committed to prison for a longer period)? Does the Justice Secretary consider that only Convention breaches that lead to a person serving time in prison would ever need damages as an effective remedy?

I would appreciate a reply by Friday 21 September.

Yours sincerely

Rt Hon Harriet Harman MP, Chair