House of Lords
House of Commons

Joint Committee on Human Rights

Legal aid: children and the residence test

First Report of Session 2014–15

Report, together with formal minutes

Ordered by the House of Lords
to be printed 25 June 2014
Ordered by the House of Commons
to be printed 25 June 2014

HL Paper 14
HC 234
Published on 30 June 2014
by authority of the House of Commons
London: The Stationery Office Limited
£9.00

The Joint Committee on Human Rights

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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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1 Introduction

1. This report looks at the proposed introduction of a residence test for civil legal aid claimants, so as to limit legal aid to those with a "strong connection" with the UK. Specifically, we look at the likely effect of the residence test on children. We have already explained our concerns about this policy: we did so in our original report,[1] to which the Government responded in February.[2]

2. The Government propose to implement their residence test policy by means of an affirmative instrument, which they laid in draft on Monday, 31 March. This report looks at that statutory instrument, particularly in relation to its likely effect on children. It is regrettable that the proposal was not introduced by primary legislation to allow both Houses to scrutinise and amend its provisions. Despite welcome concessions made in response to our original report, we are so concerned that we urge the Government to withdraw the instrument as currently drafted. If the Government does decide to proceed by affirmative instrument, we would expect the newly laid instrument to reflect our concerns as set out in this report with regard to its impact on children.

3. In this report, we first set out the background to the Government's policy in relation to a residence test for access to legal aid and the United Kingdom's relevant international human rights obligations, in particular the United Nations Convention on the Rights of the Child (UNCRC). We then set out why the Government consider that their policy complies with those obligations and our doubts as to the merit of their case. We then consider the particular position of four specific categories of children, where we are particularly concerned that the Government's approach is not compatible with their international obligations.

1 Joint Committee on Human Rights, *The implications for access to justice of the Government's proposals to reform legal aid* (7th Report, Session 2013–14, HL Paper 100/HC 766)

2 Government response to the Joint Committee on Human Rights: *The implications for access to justice of the Government's proposals to reform legal aid*. February 2014

2 Background

4. There is currently no residence test for access to legal aid funding. Non-residents are (subject to means and merits) eligible for civil legal aid for cases which are "within scope"[3] and are taking place in England and Wales.

5. The Government consulted on a package of legal aid reforms in *Transforming legal aid: Delivering a more credible and efficient* system. The Government published a response to this consultation, *Transforming legal aid: Next steps*. In the consultation response, the Government indicated that applicants for civil legal aid funding would have to satisfy a residence test. The Government argued that this would preserve legal aid funding for those with a "strong connection" with the UK, that this would ensure that only those who paid taxes or had an affiliation with the UK would receive UK-funded legal aid and that it would reduce expenditure.

Transforming legal aid: Next steps

6. In our original report on this subject,[4] we looked at the residence test as proposed in *Transforming legal aid: Next steps*. In this, the Government proposed to introduce a residence test for civil legal aid "so that only those who are:

a) lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time the application for civil legal aid was made; and

b) have resided lawfully in the UK, Crown Dependencies or British Overseas territories for a continuous period of at least 12 months at any point in the past

would be eligible for civil legal aid. Asylum seekers and serving members of Her Majesty's Armed Forces and their immediate families would not be required to satisfy the test."[5]

7. The Government said that the following modifications of their original proposal would apply:

a) "children under 12 months will not be required to satisfy the requirement to have a continuous period of at least 12 months previous lawful residence;

b) applicants for civil legal aid on certain matters of law (as set out at paragraph 125 and 126 above) will not be required to satisfy the test;

c) in the case of successful asylum seekers, the continuous 12 month period of lawful residence required under the second limb of the test will begin from the date they submit their asylum claim, rather than the date when that claim is accepted; and

3 Cases covered by civil legal aid are set out at Schedule 1, Part 1, to the LASPO Act 2012. The Ministry of Justice has guidance on each of the categories of law funded under the civil legal aid scheme, available at: http://www.justice.gov.uk/legal-aid/areas-of-work/civil

4 Joint Committee on Human Rights, *The implications for access to justice of the Government's proposals to reform legal aid* (7th Report, Session 2013–14, HL Paper 100/HC 766)

5 Para 132, *Transforming legal aid: Next steps*

d) a break of up to 30 days in lawful residence (whether taken as a single break or several shorter breaks) would not breach the requirement for 12 months of previous residence to be continuous."[6]

8. The Government also proposed the following exceptions for children:

a) "Protection of children cases (paragraphs 1, 3,[7] 9,[8] 10, 15 and 23 of Part 1 of Schedule 1 to LASPO[7]);"[8]

Our Report

9. In our original report, we were concerned by the potential effect of a residence test on asylum seekers; children; detainees; individuals unable to produce documentation; individuals who lack specific mental capacity; and trafficking victims. We also reported on the exceptional funding scheme.

10. In our original report, we focused on four topics of particular concern with regard to children: compatibility with the UN Convention on the Rights of the Child (UNCRC); Section 17 and 20 Children Act 1989 cases; undocumented children;[9] and EU and international agreement cases. We look at some of these topics again in this follow up report.

Government response

11. The Government published its response to our original report on 27 February 2014.[10] We are grateful to the Government for their timely response and for accepting some of our recommendations, including:

> "An asylum seeker who is successful in their asylum claim[2] will not be required to satisfy the residence test until 12 months after their claim for asylum was made, or until their claim for asylum was determined (whichever occurs later). The effect will[11] be to ensure that an asylum seeker who is successful in their asylum claim would be either exempt from the residence test, or be able to accrue sufficient previous lawful residence to satisfy the second limb of the test for any civil legal aid applications.
>
> Similarly, other categories of refugee who never make a claim for asylum in the UK, but are resettled or transferred here would not be required to satisfy the residence

6 Para 133, *Transforming legal aid: Next steps*

7 Legal Aid, Sentencing and Punishment of Offenders Act 2012

8 Para 125, *Transforming legal aid: Next steps*

9 Undocumented children are children who can provide no documentation to prove their identity or residency.

10 Government response to the Joint Committee on Human Rights: *The implications for access to justice of the Government's proposals to reform legal aid.* February 2014

11 That is, an individual who is granted leave to enter, or to remain in, the UK based on rights described in paragraph 30(1) of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

> test until 12 months after they arrive in the country (after which point they would have been able to accrue sufficient lawful residence to satisfy the test)."[12]

12. We also acknowledge that the Government have made a further exception from the residence test in respect to children:

> "Alongside other exceptions for protection of children cases previously set out in *Next Steps* there will be a further exception for sections 17 and 20 Children Act 1989 cases falling within paragraph 6 of Part 1 of Schedule 1."[13]

13. Nevertheless, as outlined in Chapter 2, we remain concerned about the potential effect of the residence test on children.

12 Government response to the Joint Committee on Human Rights: *The implications for access to justice of the Government's proposals to reform legal aid*. February 2014

13 *Ibid*.

3 Children and the residence test

United Nations Convention on the Rights of the Child

14. The Children's Society, Refugee Children's Consortium and Coram Children's Legal Centre expressed concern in evidence to our original inquiry that the Government had not considered the compatibility of the proposed residence test with children's rights under the United Nations Convention on the Rights of the Child (UNCRC). In paragraphs 92-93 of our original report, we concluded:

> "We are concerned that the Government has not given full consideration to its obligations under the second article of the UNCRC…we do not consider that the Government's argument that cases can always apply for exceptional funding is sufficient to meet UNCRC obligations or the Government's access to justice obligations."[14]

15. In their Response to our original report, the Government said:

> "The Government maintains that its reforms are compatible with all relevant human rights standards, including, for example, the United Nations Convention on the Rights of the Child."[15]

16. In giving evidence to us recently, Dr Maggie Atkinson, the Children's Commissioner for England and Wales, explained how, despite the Government's response and subsequent amendments to the residence test, she did not believe the residence test was compatible with the UNCRC. She said:

> "the residence test is not compliant […] there are articles in the convention that absolutely guarantee the child—any child—the right of access to legal representation and to a legal friend and/or then in the more formal stages if the proceedings go so far as the courts."[16]

17. The Children's Commissioner went on to tell us that her Office had intervened in a legal challenge to the lawfulness of the residence test brought against the Lord Chancellor by the Public Law Project,[17] to argue that the residence test will not be compliant with the state's duties under both the UNCRC and the European Convention on Human Rights (ECHR). In her intervention, the Children's Commissioner argued that the proposed residence test risked breaching a number of children's rights protected by the common law, the Human Rights Act, EU law and the UNCRC:

14 Joint Committee on Human Rights, *The implications for access to justice of the Government's proposals to reform legal aid*, HL Paper 100, HC 766.

15 Government response to the Joint Committee on Human Rights: *The implications for access to justice of the Government's proposals to reform legal aid*. February 2014

16 Q 1

17 The Public Law Project is a national legal charity whose aim is to "improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage"

> "36. The [Office of the Children's Commissioner] submits that in any administrative or judicial proceedings in which a child's best interests fall to be determined the following rights arise:
>
> (a) the child's substantive right to have his or her best interests treated as a primary consideration;
>
> (b) the adjectival, procedural right to receive advice and assistance so as to ensure the first right is practical and effective, not theoretical and illusory; and
>
> (c) where legal proceedings are contemplated, the right of access to justice which also brings with it a right to legal representation.
>
> 37. Those rights may be derived from common law (as developed in the light of the UNCRC), under the HRA (through Articles 6 or 8) or (where within scope) EU law. Articles 6 and 8 must be read in the light of the UNCRC: see for example *Neulinger v Switzerland* [GC] [2012] 54 E.H.R.R. 31, at [132,135] […] Applying the *Airey* test; (a) the child's bests interests are of 'primary importance'; (b) the complexity of legal proceedings is such that, (c) coupled with the child's age and immaturity, he or she cannot be expected to act without representation […]
>
> […] The OCC submits that the UK's introduction of a Residence Test creates an unacceptable risk of a breach of the rights set out in paragraph 36. There is a 'serious possibility' or a 'significant risk that such a breach will arise'." [18]

18. Anita Hurrell, on behalf of Coram Children's Legal Centre, echoed the concerns of the Children's Commissioner. Coram Children's Legal Centre, part of the Coram group of charities, provides "free legal information, advice and representation to children, young people, their families, carers and professionals, as well as international consultancy on child law and children's rights".[19] Anita Hurrell set out the three Articles of the UNCRC with which Coram Children's Legal Centre considers the residence test to be incompatible. She told us:

> "We are concerned that the residence test, as it has been set out, including the exemptions, is not in compliance with the UK's obligations to children under the UN Convention on the Rights of the Child. We would particularly highlight Article 2, which has been mentioned, on discrimination; Article 3, which states that children have the right to have their best interests treated as a primary consideration in all actions that affect them; and, in particular, Article 12, which states that children shall be provided with the opportunity to be heard in any administrative and judicial proceedings. We do not see how children, as a class of persons, will be able to have those rights realised if the residence test in its current form comes into effect."[20]

18 *The Queen (on the application of The Public Law Project) v The Lord Chancellor (Office of the Children's Commissioner intervening*) CO/17247/2013. The case was heard in April and judgment is still awaited.

19 See, http://www.childrenslegalcentre.com/index.php?page=about_us. Coram Children's Legal Centre is also one of the three national providers with a Legal Aid Agency contract in education law.

20 I*bid*.

Article 12 of the UNCRC

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

19. We put these concerns to the Parliamentary Under-Secretary of State at the Ministry of Justice with responsibility for the Courts and Legal Aid, Mr Shailesh Vara MP. He repeated the Government's assertion that the residence test is compatible with the UNCRC. He said:

> "We are confident that we will be compliant with the United Nations Convention on the Rights of the Child. I accept that there is a difference of view here, but it is our view that we are in compliance."[21]

20. We have listened to the Government response and have carefully considered the compatibility of the residence test with Articles 2, 3 and 12 of the UNCRC. We have also noted the Children's Commissioner's intervention in the case brought by the Public Law Project, in which the Court's judgment is awaited. We regret that the Government have not provided a detailed reasoned explanation of why there is no risk of incompatibility with the specific terms of the particular UNCRC rights in play.

21. **If children are unable to satisfy the residence test and are therefore not eligible for civil legal aid, we agree with our witnesses that children will rarely be capable of representing themselves in legal proceedings in which their best interests are at stake, as they may be unable to access a litigation friend or a legal representative and will not have the capacity to represent themselves effectively. While the Minister made clear that other arrangements and bodies do exist to assist children in this regard, we were not made clear in oral evidence from the Minister what these other arrangements or bodies were that can practically assist children in this situation. We request that the Government provide Parliament with information about what these arrangements and bodies might be.**

22. **We cannot see any way in which this proposal can be compatible with the UK's obligations to ensure that the views of children are heard in any judicial or administrative proceedings affecting the child under Article 12 UNCRC, or to ensure that the child's best interests are a primary consideration in such proceedings under Article 3. To comply with those obligations, which are owed to *all* children in the UK regardless of their residence or other status (Article 2), legal aid must in principle be available to make the child's rights under Articles 3 and 12 practical and effective for those who have no recourse to other appropriate means. As long as children have a legal**

21 Q 13

right to take part in legal proceedings which affect their interests, it is wrong in principle, and unlawful, to make it more difficult for a particular group of children to exercise that right.

23. **We conclude that the residence test will inevitably lead to breaches by the United Kingdom of the United Nations Convention on the Rights of the Child, and in particular Articles 3 and 12, in individual cases, because it will in practice prevent children from being effectively represented in legal proceedings which affect them. As a result, we urge the Government not to seek affirmative resolution of this draft instrument before Parliament, and to reconsider their position.**

Policy justification

24. In *Transforming legal aid: Next steps*, the Government gave the following policy justification for the residence test:

> "The purpose of this proposal is to ensure that only individuals with a strong connection to the UK can claim civil legal aid at UK taxpayers' expense."[22]

25. In our original report we looked at whether the Government's justification for the residence test could be applied to children. We concluded:

> "The Lord Chancellor's justification for the policy, namely contribution, in particular through the payment of tax, cannot apply in relation to children. Nor can it be said that children have chosen to make their home in the United Kingdom."[23]

26. In their response to our original report, the Government repeated their justification for the introduction of a residence test:

> "the Government continues to believe that individuals should, in principle, have a strong connection to the UK in order to benefit from the civil legal aid scheme. The Government believes that a requirement to be lawfully resident at the time of applying for civil legal aid and to have been lawfully resident for 12 months in the past is a fair and appropriate way to demonstrate such a strong connection."[24]

27. We pursued the Government's justification of this policy in relation to children with the Minister. He replied:

> "The justification is that they should have a strong connection to the country, which can include the factors that you mentioned: tax and other contributions."[25]

28. We also questioned why the Government did not consider all children to be vulnerable. The Minister said "There are categories of vulnerability. Some children are more so, and we have tried to identify those and to cover those in the exceptions"[26].

22 Para 2.11. *Transforming legal aid: Next steps*

23 Para 95. *The implications for access to justice of the Government's proposals to reform legal aid*, HL Paper 100, HC 766.

24 Government response to the Joint Committee on Human Rights: *The implications for access to justice of the Government's proposals to reform legal aid.* February 2014

25 Q 1

29. We asked the Minister how much it would cost if children were excluded; and how much the taxpayer would save if they were not. He was unable to provide with figures an estimate because the Ministry of Justice does not have any data on the question.

30. We were unable to ascertain what would be the precise cost to the taxpayer of excluding all children from having to satisfy the residence test because the Government "has not historically kept a list of nationalities"[27] so they "simply do not have the data from which to extract the information"[28]. The Government was also unable to provide us with an indication of the number of children who will be affected by the residence test, or the costs saving that will be made by applying the residence test to children.

31. We also raised concerns with the Minister regarding the 'knock-on' effect of these savings to the costs of other services. For example, if children are unrepresented in court proceedings or turn up to a court office unrepresented, the case may take longer and the Courts Service could end up incurring more costs. The Minister said that "[t]he judiciary is of course independent, but nevertheless we work closely with it, and we will of course be keeping a very beady eye on how this is impacting".[29]

32. **The Government's principal justification for this policy is to ensure that only individuals with a strong connection to the United Kingdom can claim civil legal aid at United Kingdom taxpayer's expense. They do not, however, know the size of potential savings or the number of children that may be affected. We are concerned by the Government's failure to provide any data which would support their position that excluding all children from the residence test will result in a cost to the tax-payer. We request that the Government take steps to collate this data and estimate the cost to the tax-payer. Furthermore, we are concerned that any saving in this area could result in an increase in costs for the Courts and Tribunals Service as it is forced to deal with cases concerning unrepresented children. We remain concerned at the lack of a robust savings justification for not exempting all children from the residence test.**

33. **We also remain unconvinced that the Government's second justification, that individuals should have a strong connection to the United Kingdom to benefit from the civil legal aid scheme, can be applied fairly to children. Children cannot be argued to have chosen to make the United Kingdom their home, nor can they be expected to make a "contribution" to the UK, whether by paying tax or otherwise. We conclude that this policy justification cannot be applied to children and we believe that all children fall into the category of "potentially vulnerable". On these grounds, we recommend that all children should be exempt from the residence test.**

Exceptional funding and our concerns relating to its adequacy

34. Under section 10 of LASPO, individuals who do not pass the residence test would be able to apply for "exceptional funding". Exceptional funding is granted by the Legal Aid Agency. The Government have relied on the availability of exceptional funding to argue

26 *Ibid*.

27 Q 10

28 *Ibid*.

29 Q 12

that civil legal aid would continue to be provided in any individual case where failure to do so would breach the individual's rights to legal aid under either the European Convention on Human Rights (ECHR) or European Union law.

35. In giving evidence to us, the Minister explained the Government's commitment to exceptional funding in order to comply with international obligations. He said:

> "I believe that we are in compliance with our international obligations, and indeed there are also the exceptional funding criteria. We must not overlook those. Where a particular party feels that they have not been given legal aid, they can apply for exceptional funding. That exceptional funding goes specifically to the heart of our international obligations, both in terms of Article 6 and in terms of our EU obligations."[30]

36. In our original report, we explored whether the exceptional funding regime was working in practice. We highlighted particular concerns with the small number of applications for exceptional funding, and the very small number of grants obtained (only 1% of applications in non-inquest cases). We concluded that:

> "We do not have sufficient evidence to draw conclusions as to whether the lack of funding to complete what is a detailed and lengthy application process is creating a chilling effect on the numbers of applications". However we also concluded that "The evidence we have received […] strongly suggests that the scheme is not working as intended […] We therefore conclude that the Government cannot rely upon the scheme as it currently operates in order to avoid breaches of access to justice rights".

37. In response to these concerns in our original report, the Government said:

> "The Government continues to believe that the exceptional funding scheme is working effectively but accepts that the number of applications and grants are much lower than originally estimated."[31]

38. Since the publication of our original report and the Government's response, a judgment has been handed down by the High Court on the availability of exceptional funding in immigration cases.[32] This judgment found that the Lord Chancellor's Guidance is unlawful because it is based on an incorrect understanding of the effect of ECHR case-law, and the Director's policy towards granting exceptional funding in immigration cases (which is based on the Lord Chancellor's Guidance) has therefore been too restrictive.

39. **The recent decision of the High Court that the approach to exceptional funding in immigration cases is too restrictive and therefore unlawful raises concerns as to whether the exceptional funding regime is in practice ensuring that all individual cases are being funded in those instances where failure to do so would be a breach of the European Convention on Human Rights or European Union Law. In the light of these concerns, we reiterate our conclusion from our original report: we do not consider that the exceptional funding scheme is operating in such a way as to guarantee that legal aid**

30 *Ibid*.

31 *Ibid*.

32 *Gudanaviciene v Director of Legal Aid Casework and the Lord Chancellor* [2014] EWHC 1840 (Admin) (13 June 2014).We understand that the Government intends to appeal against the judgment.

funding will always be available whenever Article 6 ECHR requires it, and we therefore conclude that the Government cannot at this stage rely upon the scheme to ensure that the residence test is ECHR compliant.

40. **If the exceptional funding regime is not working as intended, we are particularly concerned about some groups of children who may be affected by the residence test and we urge the Government to consider four such groups of children: unaccompanied children; undocumented children; children with special educational needs or disabilities; and section 17 and 20 Children Act 1989 cases. We are also concerned about how children will practically be assisted to complete the forms necessary to make an application for exceptional funding.**

Unaccompanied children

41. In our Report on the human rights of unaccompanied migrant children and young people in the UK, published in June 2013,[33] we considered the subject of legal aid and representation for unaccompanied migrant children and young people. In paragraph 234, we recommended:

> "The Government should pay particular attention to the impact of withdrawing legal aid for non-asylum immigration cases involving unaccompanied migrant children when reviewing the changes to legal aid entitlement effected in the Legal Aid, Sentencing and Punishment of offenders Act 2012. The Government should give serious consideration in any such review to the cost-benefit case for providing legal aid to all unaccompanied migrant children involved in immigration proceedings."[34]

42. Since the publication of our original report in December 2013, the Government published their response to our Report on unaccompanied migrant children. In that response, the Government said:

> "There has also been a commitment to Parliament to review the impact of withdrawing legal aid for onward appeals in immigration cases in general. This review will start in April 2014, one year after implementation. We will respond to these reviews, and any other practical issues relating to legal advice for unaccompanied migrant children identified, on the basis of the evidence gathered."[35]

43. We understand that a review is underway. Coram Children's Legal Centre however expressed concerns with regards to children who are granted limited leave to remain in the United Kingdom. These concerns regard active proceedings, and clarification over the position of children granted limited leave. Anita Hurrell told us:

> "Our specific concern about children is that if they are granted limited leave, or discretionary leave as it used to be known, until the age of seventeen and a half, which most of them are—47% in 2013—they will face a time gap in which they cannot get access to civil legal aid after they have been granted that leave. For

33 Joint Committee on Human Rights, *Human Rights of unaccompanied migrant children and young people in the UK* (1st Report, Session 2013–14, HL Paper 9/HC 196)

34 *Ibid*.

35 Government response to the Joint Committee on Human Rights: *Human rights of unaccompanied migrant children and young people in the UK*. February 2014.

> example, if they were to have an ongoing age dispute case during the process of claiming asylum, if they are not successful in their asylum claim and are refused asylum but granted another form of leave, they potentially face a time gap. We are very concerned about that, because they would then have to wait and we do not know what would happen to any ongoing proceedings."[36]

44. Anita Hurrell went on to explain Coram Children's Legal Centre's concerns with the drafting of the statutory instrument that will introduce the residence test and the effect on any ongoing proceedings for children granted limited leave. She said:

> "It is not clear to me from the way the draft order looks whether the proceedings would have to stop or whether there would be provision for any ongoing case to continue. Even if ongoing cases did continue, what would then happen to a new case if the age dispute arose only at that point later? That is a technical but quite serious concern with the way the exemptions work as they are currently drafted."[37]

45. In our original report, we raised concerns that:

> "refugees may be unable to access civil legal aid during their first few months of lawful residence in the UK. This is particularly worrying as this is the time that many refugees may need assistance in securing services they are entitled to, which could include the twelve month package of intensive support that the Lord Chancellor mentioned in relation to Gateway Protection Programme refugees."[38]

46. We also recommended that "any proposal excludes refugees as well as asylum seekers, in order to ensure that the UK's international obligations are met". The Gateway Protection Programme resettles the most vulnerable refugees in the UK and is operated in partnership with the United Nations High Commissioner for Refugees. It offers a legal route for up to 750 refugees to settle in the UK each year, and is separate from the standard procedure for asylum. This group of refugees would not have been able to satisfy the residence test until 12 months after their arrival in the United Kingdom as they were not asylum seekers. **We are pleased that the Government have accepted this recommendation to exclude refugees from their proposal.**

47. We asked the Government about unaccompanied children, who are similar to resettled refugees, and whether the Government would consider exempting them from the residence test. Mr Vara said:

> "A lot of unaccompanied children will probably qualify for asylum status or refugee status, which is also exempt, so I would have thought that many of the categories are already covered by the exemptions. To the extent that they are not, as I said earlier we believe that people should have a strong connection to the UK. If a child is unaccompanied, there are many other avenues by which redress can be pursued for them."[39]

36 Q 2

37 *Ibid*.

38 Joint Committee on Human Rights, *The implications for access to justice of the Government's proposals to reform legal aid*, HL Paper 100, HC 766

39 Q 16

48. We also asked the Government about concerns raised by Coram Children's Legal Centre regarding children granted discretionary leave being unable to satisfy the residence test until twelve months after they had arrived in the United Kingdom and the similarity of this situation to that which raised our concerns regarding resettled refugees. We also asked for clarification regarding whether cases would continue to be funded if a child's asylum status changed whilst the case was ongoing - for example, in an age dispute. The Minister clarified that "[i]f their status changed, so would the decision on legal aid because the decision is based on meeting the criteria… If they are no longer asylum seekers, they do not fit the criteria for exemption and they fall back into the general pool of those people who do not qualify".[40]

49. **The Government's proposal gives little consideration to the problem of access to justice that the proposal creates in relation to children. These include the potential complexity and urgency of the cases for which children would need advice and representation and the need to find a litigation friend to assist the child with their proceedings because they have become separated from their families. Children who have not been granted asylum but have been granted limited leave to remain are not exempt from the residence test. However, if social services unlawfully disputed the child's age at this point, the child would be unable to access civil legal aid to bring a judicial review. We do not agree that withdrawing funding from a case that could be 90 per cent complete is a valuable use of public money, and we again raise concern that this could have a negative 'knock-on' effect on the Court Service.**

Undocumented children

50. The proposed residence test does not make any provision for undocumented children. The residence test requires legal aid providers to obtain documentation to prove an individual's residency so that they might satisfy the residence test. In our original report, we noted the concerns of several witnesses regarding children who may be unable to produce documentation. Dr Nick Armstrong, in evidence to our original inquiry, said that this could include children who had fled from the family home as a result of domestic abuse, or children who, for whatever reason, are at risk of being made street homeless.[41] We also noted a study which indicated there were 120,000 undocumented children living in the UK of whom 65,000 were born to undocumented migrant parents.[42] We concluded, in our original report, that we did not agree that:

> "the Government has considered all groups of children who could be adversely affected by this test, and we note that no Child Impact Assessment has been produced. Such groups of children include children unable to provide documentation of residence and those who need help to gain access to accommodation and services."

51. Anita Hurrell, on behalf of Coram Children's Legal Centre, raised concerns regarding destitute children. She said:

40 Q 17

41 Q 11

42 Sigona, N. and Hughes, V. (2012) 'No way out, no way in: Irregular migrant children and families in the UK', ESRC Centre on Migration, Policy and Society, University of Oxford

> "Undocumented children in families who might have been in the UK for a very long time but do not have recourse to public funds and have not been able to regularise their status—obviously through no fault of the child—will not have access to civil legal aid to be able to enforce their rights."[43]

Anita Hurrell, Coram Children's Legal Centre, provided a case study of an undocumented child:

"We were involved in a case with an infant who was two years-old or so, with sickle-cell anaemia, where it was found that the local authority had acted unlawfully in that it recognised that the child was a child in need and was destitute but it had failed to provide support. That kind of case will not be possible with undocumented children."[44]

52. The Minister explained that the Government have considered our recommendations regarding undocumented children in our original report and that "[o]ne of the things that came out of it was the production of evidence. We are looking to make the assessment of evidence a lot more flexible than perhaps it was before."[45] He went on to explain that the Government planned to introduce a piece of secondary legislation "and with it will be a list of a lot of the evidence that we require".[46] Specifically addressing our concerns regarding children who satisfy the residence test but are unable to produce documentation, he said that the Government "will try to ensure that if there is any difficulty in producing documentation, those who genuinely fit the category of being exempt can be dealt with".[47] However, the Minister also said "if someone is simply missing basic documentation showing how long they have been living in this country, I should like to think that there is some landlord, a bill from a telephone company or whatever out there"[48].

53. In its 40th Report of Session 2013-14, the House of Lords Secondary Legislation Scrutiny Committee looked at the Government's statement in paragraph 7.17 of the Explanatory Memorandum to the residence test.[49] The Government said there would be *"some flexibility"* in the evidential requirements as individuals whose personal circumstances make it impractical for them to supply evidence of residency to satisfy the residence test. The Secondary Legislation Scrutiny Committee noted:

> "the MOJ's intention to address the point but no clear statement about how the flexibility will be applied is currently available."[50]

43 Q 3

44 *Ibid*.

45 Q 18

46 *Ibid*.

47 *Ibid*.

48 Q 18

49 Secondary Legislation Scrutiny Committee, *Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014; Licensing Act 2003 (Mandatory Conditions) Order 2014*, (40th Report, Session 2013–14, HL Paper 176)

50 *Ibid*.

54. The Secondary Legislation Scrutiny Committee also concluded that the Ministry of Justice's statement "indicates that it is still working some aspects of the policy out and has not yet decided whether there will be a right of appeal for an individual refused civil legal aid on these grounds (including in circumstances where they consider the provider should have taken a flexible approach to the evidence provided)". That Committee recommended:

> "the MOJ should make a clear statement of how it will handle appeals against the residence test before this Order is considered by the House".[51]

55. **We are concerned that the Government have not yet produced guidance on flexibility for the production of evidence, and that the guidance may not prevent undocumented children who pass the residence test from being unable to prove they satisfy the test. We are not persuaded by the Government's argument that documentation from other sources may make up for the absence of documentation held by the individual in question. We acknowledge that the Government intend to introduce flexibility however we believe that children who are in very vulnerable situations, such as being street homeless, may have been born in the United Kingdom and never left, yet they will still be unable to satisfy the residence test. We do not believe this is the intention of the Government nor is it consistent with the Government's policy justification for this instrument.**

56. **We concur with the House of Lords Secondary Legislation Scrutiny Committee: we recommend that the Government introduce the statutory instrument with a list of evidence that will be required, as well as guidance on the flexibility allowed and how it will handle emergency appeal situations before any residence test instrument is debated in either House.**

Children with special education needs and disabilities

57. We did not specifically look at children with special education needs or disabilities (SEND) in our original report. We have, however, looked into this group of children in this follow up report in the light of concerns raised by Coram Children's Legal Centre.

58. There is a two tier system for SEND tribunals: the Health, Education and Social Care (HESC) Chamber of the First-Tier Tribunal; and the Upper Tribunal which hears appeals against the Chamber's decisions. Parents or guardians may appeal to the Special Educational Needs and Disability Tribunal if they disagree with the council's decisions about their child's special educational needs or if they believe a school or council has discriminated against a disabled child.

59. The applicants for the First-Tier Tribunals will be a child's parent or guardian on behalf of the child. Anita Hurrell of Coram Children's Legal Centre explained its concerns regarding the adult being the applicant rather than the child with regards to how the residence test will work:

> "there is the particular anomaly that the applicant for civil legal aid at the tribunal is the parent or guardian, which means that you could have a British child living with one parent who might be undocumented—we see quite a lot of cases like that—and

51 *Ibid*.

> so does not have access to civil legal aid, so they cannot bring an appeal to the tribunal to try to get redress if they feel that their child's needs are not being met in the way they should be."[52]

60. Anita Hurrell also said that Coram Children's Legal Centre was concerned that it is "facing the prospect of children with special educational needs and disabilities being unrepresented in administrative and legal proceedings that will determine their support and what the state provides for them".[53] The Children's Commissioner also echoed these concerns. She said:

> "It therefore seems particularly perverse that there is this fantastic tribunal system, and children can be applicants in person. Then, all of a sudden, your dad or mum does not pass the residence test so you cannot be. You have exactly the same special needs as your counterpart in the same special school and you have exactly the same case to bring to a tribunal, but somehow you do not have equality of access."[54]

61. The Children's Commissioner also said that "we are not talking about a huge number of children, or indeed huge number of families".[55]

62. We asked the Government whether the residence test could result in a British child being unable to access civil legal aid for a SEND case because their parent fails the residence test. Baroness Berridge explained this concern to the Minister:

> "these children with special educational needs may in fact be British. However, let us say that the parent is undocumented in this country and the other parent resides overseas. The resident parent dies and the other parent comes from overseas and has been resident here for only a couple of months, and thus fails the residence test. That child will be left without that particular funding."[56]

63. In response to questions about children in this position, the Minister replied:

> "I think we have to draw a line somewhere. As I said earlier, these are very difficult decisions. It is a residency test, and we do believe that people should have a very strong connection to the UK. I am not persuaded that we should make another exemption in the case of special educational needs."[57]

64. **The Government argue that the number of SEND cases which will be affected may be very small. We believe that, even if it is only a handful of cases, these are still important. We are also concerned that children in this group may be able to satisfy the residence test but, due to the parent being the applicant, the child is denied civil legal aid. In our view, this is not compatible with Article 2 UNCRC which requires the child's rights to be secured without discrimination irrespective of his or her parent's national or other status. We again do not believe this is what the Government intended.**

52 Q 6

53 *Ibid*.

54 *Ibid*.

55 Q 20

56 Q 21

57 Q 20

Section 17 and 20 Children Act 1989 Cases

65. The Government's proposed residence test, in *Transforming legal aid: Next steps*, proposed the following exclusion for child protection cases: paragraphs 1, 3,[7] 9,[8] 10, 15 and 23 of Part 1 of Schedule 1 to LASPO".[58]

66. Under Section 17 (children in need) of the Children Act 1989, local authorities have a duty to safeguard and promote the welfare of children in their area, which includes having a duty to provide specific services and support for children in need. Children in need are children who are unlikely to achieve or maintain or to have the opportunity to achieve or maintain a reasonable standard of health or development without provision of services from the local authority; the child's heath or development is likely to be significantly impaired, or further impaired, without the provision of services from the local authority; or the child has a disability. Under Section 20 (duty to accommodate a child) of the Children Act 1989, local authorities have a duty to accommodate children in need in their area.

67. In our original report, we noted some of our witnesses' concerns regarding the lack of exemption for Section 17 and 20 Children Act 1989 cases. The Children's Society said:

> any 'child in need' cases (Section 17) relating to the additional care needs of a disabled child or support needs for homeless families, will not be covered. Equally cases involving unaccompanied children who are homeless and need appropriate accommodation, support, care and supervision (Section 20) will not be protected.

68. The Government's response to our original report, and the subsequent residence test as proposed in secondary legislation, recognised these concerns. The Government responded:

> "Alongside other exceptions for protection of children cases previously set out in *Next Steps* there will be a further exception for sections 17 and 20 Children Act 1989 cases falling within paragraph 6 of Part 1 of Schedule 1."

69. We have subsequently heard concerns with this response, in particular with the fact that only Section 17 and 20 cases under paragraph 6 of Part 1 of Schedule 1 are excluded from the residence test. This exclusion does not exclude all legal remedies, including judicial review. For judicial review, for section 17 and 20 Children Act 1989 cases to have been included, the exception would have had to have been Section 17 and 20 cases under paragraphs 6 and 19 of Part 1 of Schedule 1 of LASPO.

70. Anita Hurrell explained Coram Children's Legal Centre's concerns to us regarding how this could affect a child's case. She said:

> "I would just highlight the situation faced by a child advised that they have a meritorious claim and with a solicitor telling them that they could pursue that claim and could need an immediate remedy such as some kind of injunction if the situation that they are living in is very desperate. That same solicitor is going to be advising the child that they cannot help them pursue that claim. They are in effect going to be saying to the child, "You can go to the High Court but you can go there

58 Para 125, Transforming legal aid: Next steps

> on your own" […] It is going to be impossible for children to understand that they have this right but that it cannot be enforced."[59]

71. Anita Hurrell also raised concerns regarding the number of matter starts a legal aid provider has and how legal aid providers may be reluctant to take any case which cannot progress to a judicial review. [60] She told us this could result in children "not even able to access that minimal initial level of advice on those issues".[61]

72. We asked the Government about these concerns and how it would affect cases where a child had been told they have a meritorious claim but they would be unable to get legal assistance to pursue it. The Minister said:

> "I think it is important to remember that judicial review is not the be-all and end-all. We want to be at a stage where people do not have to make an application for judicial review […] I have to say that by virtue of having a residency test, there are going to be categories of person who will fall out of it."[62]

73. **We are confused as to why the Government excluded certain child protection cases from having to satisfy the residence test, but did not exclude from the test all legal remedies including judicial review. Whilst welcoming the funding of legal advice, we do not understand the justification that it is a good use of public money to give funding for advice that cannot be taken through to a judicial review. We are concerned that children could be provided legal advice on Section 17 and 20 Children Act 1989 cases, only to find that their same solicitor will at some point no longer be able to help pursue a meritorious claim.**

74. **We acknowledge the Government's argument that they would prefer that people do not have to make an application for judicial review. However, we believe that it is inevitable that judicial review will be a necessary remedy in certain cases. We are concerned that, if the residence test applies, there will no longer be the risk of a judicial review when a local authority fails a child in its care. This deterrent effect of a judicial review encourages local authorities to discharge their duties properly. Such cases requiring judicial review are of a serious nature and children should retain legal support.**

59 Q 4

60 A matter start is case started under a form of funding called Legal Help or Controlled Legal Representation where there has been no previous legal help.

61 Q 4

62 Q19

Annex—Standards engaged by the proposals

European Convention on Human Rights

Article 6—Right to a fair trial: In *Golder v United Kingdom*[63] the ECtHR confirmed that "*the right of access [to a court] constitutes an element which is inherent in the right stated by Article 6 (1).*"

Other international treaties and conventions

UN Convention on the Rights of the Child: in particular Articles 2, 3 and 12.

Article 2 of the United Nations Convention on the Rights of the Child states:

> 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
>
> 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3 of the Convention states:

> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
>
> 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
>
> 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 12 of the Convention states:

> 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

63 (1979–80) 1 E.H.R.R. 524

> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

UN Convention on the Rights of Persons with Disabilities: Articles 12 and particularly Article 13: (1) States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. (2) In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Conclusions and recommendations

Children and the residence test

1. If children are unable to satisfy the residence test and are therefore not eligible for civil legal aid, we agree with our witnesses that children will rarely be capable of representing themselves in legal proceedings in which their best interests are at stake, as they may be unable to access a litigation friend or a legal representative and will not have the capacity to represent themselves effectively. While the Minister made clear that other arrangements and bodies do exist to assist children in this regard, we were not made clear in oral evidence from the Minister what these other arrangements or bodies were that can practically assist children in this situation. We request that the Government provide Parliament with information about what these arrangements and bodies might be. (Paragraph 21)

2. We cannot see any way in which this proposal can be compatible with the UK's obligations to ensure that the views of children are heard in any judicial or administrative proceedings affecting the child under Article 12 UNCRC, or to ensure that the child's best interests are a primary consideration in such proceedings under Article 3. To comply with those obligations, which are owed to *all* children in the UK regardless of their residence or other status (Article 2), legal aid must in principle be available to make the child's rights under Articles 3 and 12 practical and effective for those who have no recourse to other appropriate means. As long as children have a legal right to take part in legal proceedings which affect their interests, it is wrong in principle, and unlawful, to make it more difficult for a particular group of children to exercise that right (Paragraph 22)

3. We conclude that the residence test will inevitably lead to breaches by the United Kingdom of the United Nations Convention on the Rights of the Child, and in particular Articles 3 and 12, in individual cases, because it will in practice prevent children from being effectively represented in legal proceedings which affect them. As a result, we urge the Government not to seek affirmative resolution of this draft instrument before Parliament, and to reconsider their position. (Paragraph 23)

4. The Government's principal justification for this policy is to ensure that only individuals with a strong connection to the United Kingdom can claim civil legal aid at United Kingdom taxpayer's expense. They do not, however, know the size of potential savings or the number of children that may be affected. We are concerned by the Government's failure to provide any data which would support their position that excluding all children from the residence test will result in a cost to the tax-payer. We request that the Government take steps to collate this data and estimate the cost to the tax-payer. Furthermore, we are concerned that any saving in this area could result in an increase in costs for the Courts and Tribunals Service as it is forced to deal with cases concerning unrepresented children. We remain concerned at the lack of a robust savings justification for not exempting all children from the residence test. (Paragraph 32)

5. We also remain unconvinced that the Government's second justification, that individuals should have a strong connection to the United Kingdom to benefit from the civil legal aid scheme, can be applied fairly to children. Children cannot be argued to have chosen to make the United Kingdom their home, nor can they be expected to make a "contribution" to the UK, whether by paying tax or otherwise. We conclude that this policy justification cannot be applied to children and we believe that all children fall into the category of "potentially vulnerable". On these grounds, we recommend that all children should be exempt from the residence test. (Paragraph 33)

6. The recent decision of the High Court that the approach to exceptional funding in immigration cases is too restrictive and therefore unlawful raises concerns as to whether the exceptional funding regime is in practice ensuring that all individual cases are being funded in those instances where failure to do so would be a breach of the European Convention on Human Rights or European Union Law. In the light of these concerns, we reiterate our conclusion from our original report: we do not consider that the exceptional funding scheme is operating in such a way as to guarantee that legal aid funding will always be available whenever Article 6 ECHR requires it, and we therefore conclude that the Government cannot at this stage rely upon the scheme to ensure that the residence test is ECHR compliant. (Paragraph 39)

7. If the exceptional funding regime is not working as intended, we are particularly concerned about some groups of children who may be affected by the residence test and we urge the Government to consider four such groups of children: unaccompanied children; undocumented children; children with special educational needs or disabilities; and section 17 and 20 Children Act 1989 cases. We are also concerned about how children will practically be assisted to complete the forms necessary to make an application for exceptional funding. (Paragraph 40)

8. We are pleased that the Government have accepted this recommendation to exclude refugees from their proposal. (Paragraph 46)

9. The Government's proposal gives little consideration to the problem of access to justice that the proposal creates in relation to children. These include the potential complexity and urgency of the cases for which children would need advice and representation and the need to find a litigation friend to assist the child with their proceedings because they have become separated from their families. Children who have not been granted asylum but have been granted limited leave to remain are not exempt from the residence test. However, if social services unlawfully disputed the child's age at this point, the child would be unable to access civil legal aid to bring a judicial review. We do not agree that withdrawing funding from a case that could be 90 per cent complete is a valuable use of public money, and we again raise concern that this could have a negative 'knock-on' effect on the Court Service. (Paragraph 49)

10. We are concerned that the Government have not yet produced guidance on flexibility for the production of evidence, and that the guidance may not prevent undocumented children who pass the residence test from being unable to prove they

satisfy the test. We are not persuaded by the Government's argument that documentation from other sources may make up for the absence of documentation held by the individual in question. We acknowledge that the Government intend to introduce flexibility however we believe that children who are in very vulnerable situations, such as being street homeless, may have been born in the United Kingdom and never left, yet they will still be unable to satisfy the residence test. We do not believe this is the intention of the Government nor is it consistent with the Government's policy justification for this instrument. (Paragraph 55)

11. We concur with the House of Lords Secondary Legislation Scrutiny Committee: we recommend that the Government introduce the statutory instrument with a list of evidence that will be required, as well as guidance on the flexibility allowed and how it will handle emergency appeal situations before any residence test instrument is debated in either House. (Paragraph 56)

12. The Government argue that the number of SEND cases which will be affected may be very small. We believe that, even if it is only a handful of cases, these are still important. We are also concerned that children in this group may be able to satisfy the residence test but, due to the parent being the applicant, the child is denied civil legal aid. In our view, this is not compatible with Article 2 UNCRC which requires the child's rights to be secured without discrimination irrespective of his or her parent's national or other status. We again do not believe this is what the Government intended. (Paragraph 64)

13. We are confused as to why the Government excluded certain child protection cases from having to satisfy the residence test, but did not exclude from the test all legal remedies including judicial review. Whilst welcoming the funding of legal advice, we do not understand the justification that it is a good use of public money to give funding for advice that cannot be taken through to a judicial review. We are concerned that children could be provided legal advice on Section 17 and 20 Children Act 1989 cases, only to find that their same solicitor will at some point no longer be able to help pursue a meritorious claim. (Paragraph 73)

14. We acknowledge the Government's argument that they would prefer that people do not have to make an application for judicial review. However, we believe that it is inevitable that judicial review will be a necessary remedy in certain cases. We are concerned that, if the residence test applies, there will no longer be the risk of a judicial review when a local authority fails a child in its care. This deterrent effect of a judicial review encourages local authorities to discharge their duties properly. Such cases requiring judicial review are of a serious nature and children should retain legal support. (Paragraph 74)

Declaration of Lords' Interests

Baroness Berridge

Non-practising Barrister

A full list of members' interests can be found in the Register of Lords' Interests: http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

Formal Minutes

Wednesday 25 June 2014

Members present:

Dr Hywel Francis, in the Chair

Mr Robert Buckland	Baroness Berridge
Mr Gareth Johnson	Lord Lester of Herne Hill
Mr Virendra Sharma	Baroness Lister of Burtersett
Sarah Teather	Baroness O'Loan

Draft Report (Legal aid: children and the residence test), proposed by the Chairman, brought up and read.

Ordered, That the Chair's draft Report be now considered.

Paragraphs 1 to 74 read and agreed to.

Resolved, That the Report be the First Report of the Committee to each House.

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

[Adjourned till Wednesday 2 July at 9.30 am

List of Reports from the Committee during the current Parliament

Session 2013–14

First Report	Legal aid: children and the residence test	HL Paper 14/HC 234

Session 2013–14

First Report	Human Rights of unaccompanied migrant children and young people in the UK	HL Paper 9/HC 196
Second Report	Legislative Scrutiny: Marriage (Same Sex Couples) Bill	HL Paper 24/HC 157
Third Report	Legislative Scrutiny: Children and Families Bill; Energy Bill	HL Paper 29/HC 452
Fourth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill	HL Paper 56/HC 713
Fifth Report	Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning, and Trade Union Administration Bill	HL Paper 61/HC 755
Sixth Report	Legislative Scrutiny: Offender Rehabilitation Bill	HL Paper 80/HC 829
Seventh Report	The implications for access to justice of the Government's proposals to reform legal aid	HL Paper 100/HC 766
Eighth Report	Legislative Scrutiny: Immigration Bill	HL Paper 102/HC 935
Ninth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill (second Report)	HL Paper 108/HC 951
Tenth Report	Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011	HL Paper 113/HC 1014
Eleventh Report	Legislative Scrutiny: Care Bill	HL Paper 121/HC 1027
Twelfth Report	Legislative Scrutiny: Immigration Bill (second Report)	HL Paper 142/HC 1120
Thirteenth Report	The implications for access to justice of the Government's proposals to reform judicial review	HL Paper 174/ HC 868

Session 2012–13

First Report	Draft Sexual Offences Act 2003 (Remedial) Order 2012: second Report	HL Paper 8/HC 166
Second Report	Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty–third Report of Session 2010–12	HL Paper 23/HC 429
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HL Paper 48/HC 634
Fourth Report	Legislative Scrutiny: Justice and Security Bill	HL Paper 59/HC 370
Fifth Report	Legislative Scrutiny: Crime and Courts Bill	HL Paper 67/HC 771

Sixth Report	Reform of the Office of the Children's Commissioner: draft legislation	HL Paper 83/HC 811
Seventh Report	Legislative Scrutiny: Defamation Bill	HL Paper 84/HC 810
Eighth Report	Legislative Scrutiny: Justice and Security Bill (second Report)	HL Paper 128/HC 1014
Ninth Report	Legislative Scrutiny Update	HL Paper 157/HC 1077

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549
Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704
Twenty-second Report	Legislative Scrutiny: Legal Aid, Sentencing and	HL Paper 237/HC 1717

	Punishment of Offenders Bill	
Twenty-third Report	Implementation of the Right of Disabled People to Independent Living	HL Paper 257/HC 1074
Twenty-fourth Report	The Justice and Security Green Paper	HL Paper 286/HC 1777