

House of Lords House of Commons

Joint Committee on Human Rights

Protocol 15 to the European Convention on Human Rights

Fourth Report of Session 2014–15

Report, together with formal minutes

Ordered by The House of Lords to be printed 26 November 2014 Ordered by The House of Commons to be printed 26 November 2014

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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The current staff of the Committee is: Mike Hennessy (Commons Clerk), Megan Conway (Lords Clerk), Murray Hunt (Legal Adviser), Natalie Wease (Assistant Legal Adviser), Michelle Owens (Senior Committee Assistant), Holly Knowles (Committee Support Assistant), and Keith Pryke (Office Support Assistant).

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Summary

This Report considers Protocol 15 to the European Convention on Human Rights which was laid before Parliament on 28 October 2014, prior to its proposed ratification by the Further to this Committee's longstanding commitment to increasing parliamentary involvement in the consideration of international treaties with significant human rights implications, the Report aims to inform and advise Parliament about the background to the adoption of Protocol 15, the effect of the amendments it makes to the Convention, and the likely implications of those amendments. We recommend that the Protocol should be ratified by the Government; but we also recommend that it should be debated in both Houses in order to raise awareness of its significance, in Parliament and beyond. We call on the Government to make the necessary arrangements for a debate in both Houses in Government time.

Protocol 15 is the culmination of the UK Government's contribution to the process of reform of the European Court of Human Rights which was one of the Government's key objectives during its Chairmanship of the Committee of Ministers of the Council of Europe in the first half of 2012. The Report explains the process which led up to the Brighton Declaration on the Future of the European Court of Human Rights in April 2012, at which the governments of the 47 Council of Europe Member States agreed a number of amendments to the Convention designed to strengthen the implementation of the Convention at the national level, to strengthen the principle of subsidiarity in the ECHR system, and to help the Court to focus its resources on the most important cases. Protocol 15 gives legal effect to those changes by amending the Convention in various respects.

The most significant amendment of the Convention is the addition to its Preamble of an express reference to the principle of "subsidiarity" and the doctrine of "the margin of appreciation". These are well established principles of interpretation in the case-law of the Court. Subsidiarity is the principle that the national authorities (governments, parliaments and courts) have the primary responsibility for securing for everyone within their jurisdiction the Convention rights and freedoms, and for providing an effective remedy when those rights are violated. The margin of appreciation is the doctrine, underpinned by the principle of subsidiarity, according to which States enjoy a degree of latitude in deciding from a range of possible ways of giving effect to the Convention rights and freedoms, subject to the ultimate supervisory jurisdiction of the Strasbourg Court.

We welcome this amendment of the Preamble to the Convention, which not only increases the transparency of the Convention, but signifies a new emphasis on the primary responsibility of the Member States of the Council of Europe to secure the rights and freedoms set out in the Convention. As the Court's recent case-law makes clear, renewed emphasis on the principle of subsidiarity and the margin of appreciation require the Court to pay close attention to the reasoned assessment by national authorities of the Convention compatibility of laws and policies: where the national authorities have engaged in a detailed and reasoned process of assessment of Convention compatibility, the Court will be more reluctant to interfere with that reasoned assessment. The amendment therefore places a greater onus on Government departments to conduct detailed assessments of the Convention compatibility of their laws and policies and on Parliament to subject the

Government's assessment to careful scrutiny and debate. In the long run this will increase both the democratic legitimacy and the effectiveness of the ECHR system. We look to the Court of Human Rights to interpret the new Preamble in a way which provides the necessary incentive to national authorities to carry out such assessments, and to the Government to make continued improvements in the quality of its assessments in human rights memoranda accompanying Bills and to provide more opportunities for informed parliamentary debate about such assessments.

Protocol 15 also makes some significant changes to the requirements that must be satisfied before the Court will consider the merits of a complaint ("the admissibility criteria"), by reducing the time limit from six months to four months and by making it easier for an application to be dismissed on the basis that the individual has not suffered a "significant disadvantage". We welcome the reaffirmation of the right of individual application in the Brighton Declaration, and draw to Parliament's attention the considerable concerns that exist about the impact of the changes to the admissibility criteria on practical and effective access to the Court. We share the concerns about maintaining practical and effective access to the Court, but make recommendations about how they can be addressed; and we conclude that on balance the real concerns about the changes to the admissibility criteria do not amount to reasons for not ratifying the Protocol. We will be returning to the issue of access to the Court, and its resources, in our forthcoming Report on Human Rights Judgments.

We welcome two further amendments to the Convention which are uncontroversial and should be beneficial: the change to the age rules for judges of the Court, and the removal of the power of the parties in a case to veto the decision that a case should be decided by the Grand Chamber.

Our Report does not comment on Protocol 16 to the Convention, which creates an optional system by which the highest national courts can seek advisory opinions on the interpretation of the Convention from the European Court of Human Rights. However we have asked the Government to make available to Parliament a detailed explanation of its reasons for deciding not to sign or ratify Protocol 16.

Introduction

Background

1.1 On 28 October 2014 the Government laid before Parliament the text of Protocol 15 to the European Convention on Human Rights ("the ECHR") which the Government proposes to ratify.1 Protocol 15 amends the Convention in various ways to give effect to some of the package of reforms agreed by the governments of the 47 Council of Europe States in the Brighton Declaration on the Future of the Court. The Brighton Declaration was adopted at the ministerial conference which marked the end of the UK's six month Chairmanship of the Committee of Ministers of the Council of Europe. The UK's principal objective during its Chairmanship was to secure agreement to further reforms to the European Court of Human Rights and Protocol 15 gives effect to those reforms agreed at Brighton which require amendment of the Convention.

1.2 Alongside Protocol 15 the Government published an Explanatory Memorandum in the name of Lord Faulks QC, Minister of State for Civil Justice and Legal Policy, which explains the effects of the Protocol and ministerial responsibility for its implementation.² A Written Ministerial Statement was also made in the House of Commons by the Minister of State for Justice and Civil Liberties, the Rt Hon Simon Hughes MP,³ and in the House of Lords by Lord Faulks QC.4

1.3 Under Part 2 of the Constitutional Reform and Governance Act 2010, the Government cannot proceed to ratification of the Protocol until the expiry of a period of 21 sitting days after the treaty has been laid before Parliament.⁵ This provides Parliament with the opportunity to debate the treaty. The Act also gives Ministers the power to extend the 21 day period by up to 21 more sitting days.6 During the passage of the 2010 Act, it was envisaged that requests for such extensions would usually be made by a relevant select committee which is scrutinising the treaty and which wishes to report to inform any parliamentary debate prior to its ratification. The Government has previously agreed to such a request for an extension, made by one of our predecessor Committees, before the old "Ponsonby Convention" was put onto a statutory footing by the 2010 Act.

1.4 We wrote to the Minister on 5 November, indicating our intention to report on Protocol 15 during the first week of December; requesting a debate in both Houses on the Protocol; and asking the Minister to exercise his power under s. 21(1) of the Constitutional Reform and Governance Act 2012 to extend the statutory period of 21 sitting days beyond Monday 8 December to enable our Report to be published to inform any debate in both Houses. The Government replied by letter dated 25 November, agreeing to extend the scrutiny period up to the start of the Christmas recess, so that members of both Houses have the opportunity to consider our Report. However, the Government declined to

Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, Cm 8951 (October 2014)

 $https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367902/43541_Cm_8951_web.pdf$

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367916/No._17_Cm_8951_-_Protocol_No_15_amending_the_Convention_-_HR___FF.pdf.

HC Deb 28 October 2014 col 16WS.

HL Deb 28 October 2014 col WS105. 4

Section 20 Constitutional Reform and Governance Act 2010.

Section 21.

provide the opportunity for a debate in both Houses, saying that it would be for our Committee to propose a motion to take note of our Report, and to secure time for this to be debated in either or both Houses during the extended scrutiny period.

1.5 We are grateful to the Government for agreeing to extend the scrutiny period by eight sitting days, but it is doubtful that this will provide sufficient time for us or our Members to secure a debate in both Houses before the end of the scrutiny period. In our view the subject-matter of the Protocol is sufficiently significant to warrant that the Government make such a debate possible in both Houses.

1.6 For reasons we explain in detail in this Report, we recommend that Protocol 15 should be ratified by the Government, but we also recommend that there should be a debate in both Houses on the Protocol before the Government does so, and that the Government should arrange such a debate in Government time.

Increasing Parliament's involvement in the adoption of human rights treaties

1.7 We and our predecessor Committees in previous Parliaments have long sought to increase Parliament's involvement in the consideration of significant international treaties with human rights implications before they are ratified by the Government. Under the UK's constitutional arrangements, it is the executive which both signs and ratifies international treaties, and for many years there was very little opportunity for any meaningful parliamentary scrutiny or participation before ratification.

1.8 In the 2001–2005 Parliament our predecssor Committee reported prior to ratification of the 14th Protocol to the European Convention on Human Rights,⁷ and in the 2005–10 Parliament our predecessor Committee reported on the UN Convention on the Rights of Persons with Disabilities⁸ and the Council of Europe Convention on the Prevention of Terrorism⁹ prior to their ratification. The Committee's Report on the UN Disabilities Convention was debated in the House of Lords.¹⁰

1.9 Our predecessor Committee in the last Parliament also scrutinised and reported substantively on the provision in the Constitutional Reform and Governance Bill which put onto a statutory footing the parliamentary scrutiny of international treaties prior to ratification.¹¹ It welcomed the Government's initiative to increase parliamentary involvement in the ratification of treaties and recommended improvements to the Bill designed to ensure that the necessary information about the treaty was made available to Parliament in order to facilitate proper scrutiny. The Committee's recommendation led to the Bill being amended to include an express requirement that when a treaty is laid before Parliament prior to ratification it is accompanied by an Explanatory Memorandum explaining the provisions of the treaty, the reasons for the Government seeking its ratification, and any other matters the Minister considers appropriate.¹² In the current

⁷ First Report of Session 2004–05, *Protocol No. 14 to the European Convention on Human Rights*, HL Paper 8/HC 106.

⁸ First Report of Session 2008–09, The UN Convention on the Rights of Persons with Disabilities, HL Paper 9/HC93.

⁹ First Report of 2006–07, The Council of Europe Convention on the Prevention of Terrorism, HL 26/HC 247.

¹⁰ HL Deb 29 April 2009.

¹¹ Fourth Report of 2009–10, Legislative Scrutiny: Constitutional Reform and Governance Bill, HL 33/HC 249, paras 1.30–1.38

¹² Constitutional Reform and Governance Act 2010, s. 24.

Parliament, one of the objectives of our ongoing inquiry into Violence against Women and Girls is to subject the Istanbul Convention on Violence against Women and Girls to preratification scrutiny by Parliament.

1.10 We are pleased to have the opportunity to build on the earlier work of our predecessors aimed at increasing parliamentary involvement in the ratification of international treaties with human rights implications. We welcome the Government's preparedness to extend the period of time between laying the Protocol before Parliament and proceeding to ratification in order to give us an opportunity to report on the Protocol and Parliament an opportunity to debate it.

Our inquiry into Protocol 15

1.11 Protocol 15 was opened for signature on 24 June 2013. The UK Government signed it on that date and on 4 July 2013 indicated in a Written Answer to a question about its plans to ratify the Protocol that it intended to lay it before Parliament "after the summer, with a view to completing its ratification this autumn."13 For reasons the Government has not sought to explain, however, more than a year elapsed before the instrument was laid before Parliament in October 2014.

1.12 We considered Protocol 15 in July 2013 and, on account of its significance as a human rights treaty, and in particular the potential significance of the inclusion in the Preamble of reference to subsidiarity and the margin of appreciation, we decided to scrutinise it with a view to reporting to both Houses during the 21 day period after it is laid before Parliament prior to ratification. We have also consistently indicated our commitment to ensuring that there is a meaningful opportunity for civil society to inform Parliament's scrutiny of such treaties prior to ratification, and on 8 July 2013 we therefore issued a call for evidence inviting comments on any aspect of the Protocol from any interested person or organisation.14

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A group of ten human rights NGOs engaged in litigation at the European Court of Human Rights ¹⁵
The Immigration Law Practitioners' Association
The Equality and Human Rights Commission
The Law Society of Scotland
The Prison Reform Trust

¹³ HC Deb 4 July 2013 col 754W (Damian Green MP).

¹⁴ Call for evidence: Protocol 15 to the European Convention on Human Rights, 8 July 2013 http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/call-for-all-foevidence-protocol-15-echr/

¹⁵ Amnesty International, The AIRE Centre, European Human Rights Advocacy Centre, Helsinki Foundation for Human Rights, Human Rights Watch, INTERIGHTS, International Commission of Jurists, JUSTICE, Open Society Justice Initiative and REDRESS.

1.14 We are grateful to all those who responded to our call for evidence. We have considered carefully the submissions we received and we refer to them where relevant in this Report. Copies are available on the relevant page of our website.¹⁶

The purpose of our Report

1.15 The purpose of this Report is to inform Parliament about the background to the adoption of Protocol 15, to summarise the effect of its main provisions and to explain the significance of some of those provisions. In particular we aim to draw to Parliament's attention the implications of the insertion into the Convention of references to the principle of subsidiarity and the doctrine of the margin of appreciation. We welcome this important change, which, when considered alongside recent developments in the case-law of the Court, increases the significance in the Convention system of national assessments of the human rights compatibility of laws and policies by both governments and parliaments. We also draw to Parliament's attention concerns about the potential impact of the changes to the admissibility criteria on the right of practical and effective access to the Court.

1.16 In this Report we recommend that the Protocol should be ratified by the Government but we also recommend that it should be debated in both Houses in order to raise awareness, within Parliament and beyond, of the significance of the Protocol and in particular of the amendment to the Preamble to the Convention to refer to subsidiarity and the margin of appreciation. We recommend that the Government make the necessary arrangements for a debate on the Protocol in Government time in both Houses.

Background and effect of Protocol 15 2

The UK's Chairmanship of the Committee of Ministers

- 2.1 Protocol 15 is the culmination of the UK Government's contribution to the ongoing process of reform of the European Court of Human Rights during its Chairmanship of the Committee of Ministers of the Council of Europe between November 2011 and May 2012.
- 2.2 At the outset of its Chairmanship, in November 2011, the UK Government announced that the overarching theme of its Chairmanship would be the promotion and protection of human rights, with a particular focus on developing practical measures to, amongst other things, reform the European Court of Human Rights and strengthen implementation of the European Convention on Human Rights.¹⁷ The Government said that these objectives would be given the highest political importance by the UK, because of the urgent need for concrete and effective action to find an enduring solution to the Court's huge and growing backlog of applications, which was undermining the Court's efficiency and authority. To this end, the UK aimed to reach consensus on a package of measures, to be agreed at a Ministerial conference in April 2012, which would include, in the words of the UK's statement of priorities:
 - A set of efficiency measures to enable the Court to focus quickly, efficiently and transparently on the most important cases that require its attention;
 - Strengthening the implementation of the Convention at national level, to ensure that national courts and authorities are able to assume their primary role in protecting human rights; and
 - Measures to strengthen subsidiarity—new rules or procedures to help ensure that the Court plays a subsidiary role where member states are fulfilling their obligations under the Convention.

The Prime Minister's speech to the Council of Europe

- 2.3 In a speech to the Parliamentary Assembly of the Council of Europe in Strasbourg in January 2012 on the European Court of Human Rights, the Prime Minister set out a number of goals being pursued by the UK in relation to reform of the Court, which he described as the focus of the UK's Chairmanship.¹⁸
- 2.4 After stressing the UK's commitment to defending human rights, and acknowledging the "vital role" played by the Council of Europe, the Convention and the Court in upholding those rights, the Prime Minister set out the UK Government's analysis of why the Court's ability to play this vital role is under threat and requires reform. There were three inter-linking issues causing the UK Government concern.
- 2.5 First, there were simply too many cases going to the Court, resulting in a huge backlog, which not only led to unacceptable delays in the resolution of cases, but which also

¹⁷ United Kingdom Chairmanship of the Council of Europe: Priorities and Objectives (7 November 2011), CM/Inf (2011) 41 https://wcd.coe.int/ViewDoc.jsp?id=1859397

¹⁸ https://www.gov.uk/government/speeches/speech-on-the-european-court-of-human-rights

threatened the Court's ability to fulfil its main purpose, to deal with the most serious violations of human rights.

2.6 Second, while the UK remained committed to the right of individual petition, it was concerned about the Court becoming a "court of fourth instance": that is, a court of appeal against all decisions about ECHR rights taken at national level. In the UK's view, "the Court has got to be able to fully protect itself against spurious cases where they have been dealt with at the national level."

2.7 Third, the UK Government was concerned that "not enough account is being taken of democratic decisions by national parliaments." It understood the Court's determination to make sure that consistent standards of rights are upheld across the 47 member states, "but at times it has felt to us in national governments that the 'margin of appreciation'—which allows for different interpretations of the Convention—has shrunk." The Prime Minister cited prisoner voting and the deportation of foreign nationals who pose a threat to national security as two examples of issues on which the UK Government felt that the Court was paying insufficient attention to "credible democratic anxiety", and thereby risked losing the confidence of the public:

"I completely understand the Court's belief that a national decision must be properly made. But in the end, I believe that where an issue like this has been subjected to proper, reasoned democratic debate [...] and has also met with detailed scrutiny by national courts in line with the Convention [...] the decision made at a national level should be treated with respect."

2.8 In the Government's view, the Court was in need of reform to address these three issues which together threatened to shift the Court's role away from its true purpose and therefore undermine its reputation. The UK therefore had a number of proposals for reform which it wanted to take forward during its Chairmanship, including improving the Court's efficiency, strengthening the principle of subsidiarity by finding ways to give it practical effect, and generally emphasising the national system's primary responsibility for safeguarding Convention rights. Significantly, the Prime Minister saw rebalancing the relationship with the Court as a two-way street: alongside reforms of the Court, member states also had to get better at implementing the Convention at national level and in this "Parliaments also have a key role—and we are proud of the role that our own Joint Committee on Human Rights plays."19

The Brighton Declaration

2.9 Towards the end of its Chairmanship, the UK convened a ministerial conference which resulted in the Brighton Declaration on the Future of the European Court of Human Rights, agreed on 20 April 2012.²⁰

2.10 The Brighton Declaration opened with a reaffirmation of the States' "deep and abiding commitment to the Convention, and to the fulfilment of their obligation under the Convention to secure to everyone within their jurisdiction the rights and freedoms defined

¹⁹ Prime Minister's speech to the Parliamentary Assembly of the Council of Europe, 25 January 2012.

²⁰ http://www.coe.int/en/web/portal/-/final-declaration?inheritRedirect=true

in the Convention."21 The fundamental principle of subsidiarity was recognised as underpinning the "shared responsibility" of the States Parties and the Court for realising the effective implementation of the Convention.²² Better implementation of the Convention at national level is an important objective in the Declaration, which recognises that full national implementation requires States to take effective measures to prevent violations, including formulating all laws and policies in way that gives full effect to the Convention. The States affirmed their strong commitment to fulfil their primary responsibility to implement the Convention at national level.²³ Specific practical measures envisaged by the Declaration to that end include "offering to national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the Government."24

- 2.11 We welcome the emphasis in the Brighton Declaration on the importance of national implementation of the Convention, and on the primary responsibility of States to secure Convention rights in their national legal system. We agree with the Government that better national implementation of the Convention is the key to securing the long-term survival of the European Court of Human Rights and the entire Convention system. In the long run, the only way to prevent the Court from being overwhelmed by the sheer volume of applications is to prevent those cases from arising in the first place. This is partly a matter of ensuring that remedies are available at the national level for violations of Convention rights. But, equally importantly, it is a matter of preventing such violations from arising in the first place at the national level.
- 2.12 We also welcome the Prime Minister's recognition in his 2012 speech to the Parliamentary Assembly of the Council of Europe that parliaments have a "key role" in implementing the Convention at the national level, and his endorsement of the role of our Committee. Of all the organs of the state, parliaments are the best-placed institution to prevent violations of the Convention from arising in the first place, or to prevent repeats of violations which have been found to have already taken place. While national courts can provide remedies for violations of Convention rights, national parliaments have an important preventive role: by scrutinising laws carefully for Convention compatibility, they can prevent violations from arising in the first place, and by trying to bring about the full and timely implementation of judgments they can prevent large numbers of repetitive applications. Parliaments can therefore help to ease the backlog of cases before the Court by reducing the number of applications which need to be made.
- 2.13 We also welcome the commitments made in the Brighton Declaration to take some specific practical measures designed to enhance the role of parliaments in ensuring effective implementation, such as offering to national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the Government, and the encouragement to facilitate the important role of national parliaments in scrutinising the effectiveness of the measures taken by governments to implement judgments of the Court.

²¹ Brighton Declaration, para. 1.

²² Brighton Declaration, para. 3.

²³ Brighton Declaration, para. 9a.

²⁴ Brighton Declaration, para. 9(c)(ii).

The effect of Protocol 15

- 2.14 The Brighton Declaration records the political agreement of the Governments of the 47 Member States of the Council of Europe to a package of reforms, including commitment in principle to amend the Convention in five specific respects:
 - (1) to add a reference to the principle of subsidiarity and the doctrine of the margin of appreciation to the Preamble to the Convention;
 - (2) to change the rules on the age of judges of the Court, to ensure that all judges are able to serve the full nine-year term;
 - (3) to remove the right of parties to a case before the Court to veto the relinquishment of jurisdiction in a case before a Chamber in favour of the Grand Chamber;
 - (4) to reduce the time limit for applications to the Court from six months to four months; and
 - (5) to tighten the admissibility criteria to make it easier for the Court to reject trivial applications.
- 2.15 Protocol 15 will amend the Convention to give legal effect to these five changes.
- 2.16 While some of the changes to the text of the Convention made by Protocol 15 are relatively technical and uncontroversial in nature, it also contains some important provisions amending the admissibility criteria which will potentially affect the ability of individuals to obtain practical and effective access to the Court, and one provision which, as the Government's Explanatory Memorandum rightly observes, "goes to the heart of current domestic and international debates about the role of the Court and its relationship with the High Contracting Parties to the Convention." In the remainder of this Report we consider the provisions of the Protocol in what we consider to be the order of their significance.

Addition to the Preamble to the ECHR 3

Inclusion of reference to subsidiarity and the margin of appreciation

3.1 Article 1 of Protocol 15 inserts a new recital into the Preamble to the Convention, so as to include in the text of the Convention an express reference to the principle of "subsidiarity" and the doctrine of the "margin of appreciation":

"Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention,"

The purpose of the amendment of the Preamble

3.2 The Government, in its Explanatory Memorandum accompanying the Protocol, says that "it will be important that the Court follows the clear direction given by the High Contracting Parties in the Brighton Declaration as to the limits of its role, and reflects this in the cases that it admits and judgments that it gives."

3.3 Some of the submissions we received in relation to the Protocol were concerned that this amendment might be interpreted in a way which weakens the level of human rights protection in the Convention system, and stressed the importance of awareness of the background to this amendment in order properly to understand its intended effect. The group of human rights NGOs and the EHRC, for example, all drew attention to the fact that this amendment of the Preamble was a compromise arrived at in the Brighton Declaration following opposition to more far-reaching proposals made by the UK, including inserting references to the margin of appreciation in the substantive body of the Convention itself. An even more far-reaching UK proposal had been to amend the admissibility criteria so that the Court could only accept applications where the national court had made an obvious error, but that idea was rejected by a number of States in the intergovernmental negotiations which led up to the Brighton Declaration.

3.4 The purpose of this addition to the Preamble of the Convention is set out in the Committee of Ministers' Explanatory Report to the Protocol, which in turn reflects the language of the Brighton Declaration: it is intended to enhance the transparency and accessibility of these two particular characteristics of the Convention system, and to be consistent with the doctrine of the margin of appreciation as developed by the Court in its case-law.25 The proposal to include a reference to the principle of subsidiarity and the doctrine of the margin of appreciation "as developed in the Court's case-law" was also not intended to dilute in any way the States' commitment to give full effect to their obligation to secure the rights and freedoms defined in the Convention, which was explicitly recalled in the same paragraph of the Brighton Declaration.²⁶

²⁵ Explanatory Report to Protocol 15, CM (2012) 166 add., para. 7.

²⁶ Brighton Declaration, para. 12b.

3.6 The final text of Article 1 was not amended to take account of the Court's concern, but the text of the accompanying Explanatory Report clarifies the drafters' intention that the reference to the margin of appreciation is to be consistent with the doctrine "as developed by the Court in its case-law." The Court in its Opinion on the draft Protocol 15 was satisfied that that this stated intention coincides with its own suggestion of a textual amendment, and pointed out that both the Explanatory Report itself and the *travaux preparatoires* of the Protocol will be relevant to the interpretation of the Protocol by the Court in due course. ²⁹

- 3.7 Paragraphs 8 and 9 of the Committee of Ministers' Explanatory Report on the Protocol are therefore significant to a proper understanding of the intended effect of this amendment, because, as the Government's own Explanatory Memorandum points out, they provide a clear statement of the proper role of the Court, of the principle of subsidiarity and the doctrine of the margin of appreciation.³⁰
 - 8. The States Parties to the Convention are obliged to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, and to provide an effective remedy before a national authority for everyone whose rights and freedoms are violated. The Court authoritatively interprets the Convention. It also acts as a safeguard for individuals whose rights and freedoms are not secured at the national level.
 - 9. The jurisprudence of the Court makes clear that the States Parties enjoy a margin of appreciation in how they apply and implement the Convention, depending on the circumstances of the case and the rights and freedoms engaged. This reflects that the Convention system is subsidiary to the safeguarding of human rights at national level

²⁷ See Opinion of the Court on Draft Protocol No. 15 to the European Convention on Human Rights, adopted on 6 February 2013, para. 4.

²⁸ Explanatory Report, para. 7.

²⁹ See e.g. the Court's references to the Explanatory Report to Protocol 14 in Korolev v Russia, App. No. 25551/05 (2010).

³⁰ These paragraphs of the Explanatory Report are based on paragraphs 10 and 11 of the Brighton Declaration.

and that national authorities are in principle better placed than an international court to evaluate local needs and conditions. The margin of appreciation goes hand in hand with supervision under the Convention system. In this respect, the role of the Court is to review whether decisions taken by national authorities are compatible with the Convention, having due regard to the State's margin of appreciation.

3.8 The Court, in its Opinion on the draft Protocol, welcomed the insertion into the Preamble of a reference to the principle of subsidiarity, which has been a fundamental theme of the reform process, and was satisfied that the wording used in the new recital and in the Explanatory Report reflects the Court's pronouncements on the principle.³¹

3.9 We welcome the clarification in the explanatory material accompanying Protocol 15 which makes clear that the terms "subsidiarity" and "margin of appreciation" in the amended Preamble are to be interpreted in accordance with the Court's wellestablished case-law. The explanatory material also makes clear that the proposal to include a reference to the principle of subsidiarity and the doctrine of the margin of appreciation "as developed in the Court's case-law", was not intended to dilute in any way the States' commitment to give full effect to their obligation to secure the rights and freedoms defined in the Convention, which was explicitly recalled in the same paragraph of the Brighton Declaration.³²

3.10 The "principle of subsidiarity" referred to in the amended Preamble is therefore the principle that national governments, parliaments and courts have the primary responsibility for securing for everyone within their jurisdiction the rights and freedoms defined in the Convention, and for providing an effective remedy before a national authority for everyone whose rights and freedoms are violated. The "margin of appreciation" referred to in the amended Preamble is the doctrine that, subject to the supervisory jurisdiction of the Strasbourg Court, States enjoy a degree of latitude in deciding from a range of possible ways in which the rights in the Convention may be implemented. The margin of appreciation is variable, and dependent on the circumstances of the particular case, and has no application at all in relation to certain rights, such as the right to life, the prohibition of torture or the ban on slavery or forced labour.

3.11 We draw to Parliament's attention the fact that subsidiarity and the margin of appreciation, properly understood in the light of the Court's case-law, are not therefore concerned with the primacy of national law over Convention law, or with demarcating national spheres of exclusive competence. The Convention system is subsidiary, not to the political will of the national authorities, but to the national system for safeguarding human rights. Where that national system is well developed, and has led to detailed and reasoned assessment of a law or policy by the national authorities in light of the Convention and the principles in the Court's case-law, the assessment of the national authorities is likely to be within the State's margin of appreciation (depending on the nature of the right).

³¹ See Opinion of the Court on Draft Protocol No. 15 to the European Convention on Human Rights, adopted on 6 February 2013, para. 5.

³² Brighton Declaration, para. 12b.

The implications of the amended Preamble

3.12 Since the Brighton Declaration and the adoption of the text of the amended Preamble, there has been much debate about whether the amendment will make any practical difference, or is merely a cosmetic change designed to assuage political anxieties, in the UK in particular, about the proper role of the Court. Much will depend on what significance is attributed to the amended Preamble by the Court.

3.13 The indications are that the amended Preamble is likely to have a tangible impact on the approach of the Court. In a recent public lecture, the President of the Court, Mr. Dean Spielmann, indicated that it is not likely that the new provision will be regarded as modifying the basis of the Court's review, which has been laid down in the case-law of many years, but nor can it be dismissed as being "of limited significance—a mere rhetorical flourish, or form of window-dressing."33 As he pointed out, under the Vienna Convention on the Law of Treaties, the preamble to a treaty is in an integral part of the treaty itself and so is relevant to its interpretation, and there are many examples in the Court's case-law of the Court drawing upon certain fundamental precepts set out in the Preamble when interpreting the substantive provisions of the Convention.³⁴ The inclusion of these terms in the Preamble is likely to lead to a renewed focus by the Court on the adequacy of the protection of human rights at the domestic level.

3.14 The amendment to the Preamble therefore has important implications for Parliament and its consideration of the compatibility of legislation with the ECHR. It has long been clear from the case-law of the Court that the legislative process is highly relevant to the margin of appreciation which is afforded to States. In short, where the national authorities have engaged in a detailed process of assessment (or "appreciation") of the impact of a proposed law on the Convention rights which are at stake, the Court of Human Rights is generally reluctant to interfere with the assessment arrived at by those national authorities. In the words of the Court itself, "[w]here the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts."35

3.15 In recent case-law, the Court has been increasingly explicit that the same deference will be applied by the Court to Parliament's careful consideration of Convention compatibility. In a significant and growing number of recent cases against the UK, for example, the Court has demonstrated its willingness to defer to the reasoned and thoughtful assessment by national authorities (including Parliament) of their Convention obligations, resulting in legislation being upheld as being within the UK's margin of appreciation. Statutes prohibiting paid political advertising,³⁶ restricting the right of British citizens resident overseas to vote in parliamentary elections,³⁷ and prohibiting secondary

³³ See e.g. "Allowing the Right Margin: the European Court of Human Rights and the National Margin of Appreciation Doctrine: Waiver or Subsidiarity of European Review?", Speech by Mr Dean Spielmann, President of the European Court of Human Rights, 13 December 2013; "Whither the Margin of Appreciation?", Current Legal Problems Lecture, 20 March 2014.

³⁴ See e.g., in cases against the UK, Golder v UK; Malone v UK; Matthews v UK; Ireland v UK.

³⁵ Von Hannover v Germany (No. 2) [GC] (2012).

³⁶ Animal Defenders International v UK, Application no. 48876/08 (22 April 2013).

³⁷ Shindler v UK, Application no. 19840/09 (7 May 2013).

strike action³⁸ have all been upheld by the Strasbourg Court, in part because of the extensive and detailed examination by Parliament of the Convention compatibility of the law, in which Parliament has taken into account the principles and case-law of the Convention.

3.16 One of the implications of the amendment of the Preamble therefore is that parliamentary consideration of ECHR questions becomes even more important if States wish to invoke the margin of appreciation when laws are challenged for being incompatible with Convention rights. As ILPA pointed out in its submission to us, the new emphasis on the safeguarding of human rights by national authorities casts a heavier onus on legislatures and executives to "secure rights within their respective States and not simply rely on national judiciaries to enforce rights as and when a breach occurs."

3.17 We welcome the amendment of the Preamble to the Convention to include reference to the principle of subsidiarity and the doctrine of the margin of appreciation. In our view, this simple textual amendment goes beyond merely making explicit in the Convention certain principles of interpretation developed by the Court. Rather, it signifies a new era in the life of the Convention, an age of subsidiarity, in which the emphasis is on States' primary responsibility to secure the rights and freedoms set out in the Convention. As the Court's recent case-law on the margin of appreciation makes clear, such a focus on subsidiarity requires the Court to pay close attention to the reasoned assessment of Convention compatibility by the national authorities: the Government when formulating the relevant policy and drafting the relevant law; Parliament when scrutinising and debating the law in question; and the courts when adjudicating on subsequent legal challenges to the compatibility of the law with Convention rights.

3.18 We welcome the Court's renewed attention to the reasoned assessment of Convention compatibility by the national authorities, because in the long run it will increase both the democratic legitimacy and the effectiveness of the Convention system, by encouraging both governments and parliaments to conduct their own detailed and reasoned assessments of Convention compatibility. We therefore draw to Parliament's attention the increased onus the amendment to the Preamble places on the Court to pay respectful attention to the reasoned assessment of the national authorities, and, in turn, the correspondingly greater onus on, first, Government departments to conduct such detailed assessments of the Convention compatibility of their laws and policies and, second, Parliament to subject the Government's assessment to careful scrutiny and debate.

3.19 We look to the Court to ensure that the insertion of references to subsidiarity and the margin of appreciation into the Preamble to the Convention will accelerate the recent trend in the Court's case-law on subsidiarity and the margin of appreciation; and we look to the Government to ensure that this will in turn lead to continued improvement in the quality of the human rights memoranda provided by Government departments to accompany Bills, and more opportunities for informed parliamentary consideration and debate of Convention compatibility issues.

Changes to admissibility requirements

Admissibility criteria and the right of individual application

- 4.1 Articles 4 and 5 of Protocol 15 make some significant changes to the "admissibility criteria" for applications to the Court: that is, the requirements that must be satisfied by an application before the Court will consider the merits of the complaint.³⁹
- 4.2 The admissibility criteria are obviously an important means of regulating the workload of the Court: the more restrictive the admissibility criteria, the smaller the volume of cases that the Court has to decide on the merits. As the Government makes clear in the Written Ministerial Statements accompanying the Protocol, one of the objects of the reforms promoted by the UK Government and agreed at Brighton was to help ensure that the Court focuses on allegations of serious violation or major points of interpretation of the Convention, so as to reduce the backlog and deliver swifter justice in the fewer cases that come before it. In the Brighton Declaration, the Governments agreed that the admissibility criteria in the Convention should provide the Court with practical tools to ensure that it can concentrate on those cases in which the principle or the significance of the violation warrants its consideration.40
- 4.3 By the same token, changes to the admissibility criteria which raise the threshold of admissibility clearly have the potential to hinder the effective exercise of the right of individual application: the foundational right, enshrined in the Convention itself, of any individual to apply to the Court to complain of a violation of a Convention right.⁴¹ The Governments of the Member States of the Council of Europe reaffirmed their commitment to the right of individual application as a cornerstone of the Convention system in the Brighton Declaration, and accepted that it should be "practically realisable, and States Parties must ensure that they do not hinder in any way the effective exercise of this right."42
- 4.4 We welcome the States Parties' express reaffirmation in the Brighton Declaration of their attachment to the right of individual application to the European Court of Human Rights and their recognition that the right to present an application is a cornerstone of the Convention system, the effective exercise of which must not be hindered by States in any way. We note that the changes to the admissibility requirements in Protocol 15 are intended to tighten those requirements and so reduce the volume of cases which reach the Court for decision on the merits. The changes therefore require careful scrutiny to ensure that they will not undermine the practical and effective exercise of the right of individual application.

The admissibility criteria are set out in ECHR Articles 34 and 35.

⁴⁰ Brighton Declaration, para. 14.

⁴¹ ECHR Article 34 provides that the Court may receive applications from any person, NGO or group of individuals claiming to be the victim of a violation of Convention rights by one of the States. The States also undertake in Article 34 "not to hinder in any way the effective exercise of this right."

⁴² Brighton Declaration, paras 2, 13 and 31.

Reduction of the six month time limit for making applications (Article

4.5 Article 4 of Protocol 15 makes a significant change to the admissibility criteria by reducing from six months to four months the time limit for making such applications.⁴³ The Court will only be able to deal with any application made within four months of the date on which the final domestic decision was taken.

4.6 The reduction in the time limit will only take effect six months after Protocol 15 comes into force, and will be applied only to applications in which the final domestic decision (which starts the four month clock running) is taken after the new time limit takes effect.⁴⁴

4.7 The reduction of the time limit for applications to the Court was proposed by the Court itself in its Preliminary Opinion for the Brighton Conference, in light particularly of developments in modern communications technology. In addition to the development of swifter communications technology, the Committee of Ministers' Explanatory Report to Protocol 15 invokes the existence of similar time limits in the Member States as a justification for the reduction of the time limit.⁴⁵

4.8 The Court in its Opinion on the draft Protocol made no further remark on the reduction of the time limit, but welcomed the "valuable measure of legal certainty" provided by the transitional rules accompanying this amendment.⁴⁶ The Court says that it will ensure that the public is notified in a clear and timely way of the entry into force of the new time limit, and it looks to Governments, national human rights institutions, the legal profession and civil society to assist it in this respect.

4.9 All of the submissions that we received expressed concern about the reduction in the time limit because of the risk that it will undermine effective access to a remedy. The group of human rights NGOs, for example, with very considerable experience between them of litigating before the European Court of Human Rights, regard it as a proposal which has been adopted without adequate time for reflection on its potential impact on applicants, on the substantive quality of applications, and on the Court's effectiveness. The NGOs point to the risk that the shorter time limit will risk undermining applicants' effective access to the Court in a variety of situations—for example, for applicants in jurisdictions where there is often a prolonged delay in notifying applicants of final domestic decisions; who live in geographically remote locations; who lack access to modern communications technology such as the internet; whose cases are complex; who have limited access to sufficiently qualified lawyers, or whose lawyers are not adequately experienced in bringing applications to the Court.

4.10 ILPA also regards the reduction in the time limit as unwelcome, because it is liable to restrict access to the Court's supervisory jurisdiction for migrants due to the obstacles to effective access to justice that they already face: they often lack access to legal aid, they may be in immigration detention or destitute and homeless, as well as facing language or cultural barriers to accessing legal services. Such applicants, who rely on the protection of

⁴³ ECHR Article 35(1).

⁴⁴ Protocol 15 Article 8(3).

⁴⁵ Explanatory Report, para. 21.

⁴⁶ Court's Opinion, para. 12.

the Court because of their vulnerability, often need time to secure advice and assistance to help them make an application to the Court. Any reduction in the time limit from six months to four months, ILPA argues, is bound to have an adverse impact on some vulnerable individuals who, because of the obstacles to their receiving prompt and effective legal advice, may not even be aware that they have grounds to make an application until after the four months have passed.

- 4.11 The Prison Reform Trust makes a very similar case in relation to prisoners: due to the higher hurdles they face to obtain legal advice and representation, reducing the time limit will inevitably jeopardise their practical and effective access to justice and so weaken the protection offered by the Convention. The Law Society of Scotland makes similar arguments, pointing out that those who are vulnerable for reasons relating to illness, disability or age will also be particularly affected by the reduction in the time limit. The EHRC also regrets this proposal because of the risk that it will lead to a denial of justice for some victims of human rights abuses and therefore risks undermining the right of individual application.
- 4.12 In light of these concerns about the risk of undermining effective access to the Court, the submissions we received stressed the importance of information about the change being widely disseminated to advisers, lawyers, NGOs and others who may assist a victim in making an application to the Court; and the importance of the Court using its discretion in cases where strict application of the time limit would result in injustice, or disproportionately restrict the right of individual petition.
- 4.13 We are very sympathetic to the concerns expressed about the risk of a shorter time limit reducing practical and effective access to the Court and thereby diminishing the fundamentally important right of individual petition, which the Governments of the Council of Europe Member States rightly recognise as the cornerstone of the ECHR system. In this Parliament we have done a lot of work, in different contexts, on the right of effective access to justice.⁴⁷ Some of the most important conclusions we draw from that work are that access to justice is a foundational right, in the sense that the vindication of all other legal rights depends upon it; that there is a heavy onus on the State to make the right practical and effective, by not placing obstacles in the way of exercising it and taking positive steps where necessary to facilitate it; and that vulnerable groups such as migrants, victims of trafficking, children and prisoners, whose need for access to legal remedies is most acute, often face multiple obstacles to such access.
- 4.14 We draw to Parliament's attention the fact that there is considerable concern about the reduction of the time limit for applying to the Court from six months to four months, because of the risk that in practice it will impede effective access to the Court, in particular for members of vulnerable groups who already face severe obstacles to securing practical and effective access to justice.
- 4.15 We note, however, that the proposal to shorten the time limit emanated not from the governments of the Member States of the Council of Europe, who are the respondents to applications and therefore have a clear interest in reducing the time limit, but from the Court itself. The Court has staunchly defended the right of individual petition in the face

⁴⁷ Ref Reports on LASPO Bill; legal aid; residence test; unaccompanied migrant children; judicial review; and violence against women.

of proposals by Governments which would have significantly curtailed it, but it is under considerable political pressure to reduce the still very large backlog of cases before it and to reduce the amount of time a case takes from application to final determination. We have concerns about the extent to which that political pressure may undermine the right of individual petition, and about some of the means by which the current backlog is being reduced. We intend to return to that issue, and whether the Court is receiving adequate resources to enable it to fulfil its role, in our forthcoming Report on Human Rights Judgments.

4.16 We also note, however, that the time limit for bringing judicial review applications in UK law is already considerably shorter than the proposed new time limit for applications to the European Court: the requirement is that judicial review applications be brought promptly and, in any event, within three months of the act or decision complained of, and for some purposes (eg. challenges to some planning decisions) the outer limit is six weeks.

4.17 We also note that it is well established in the case-law of the European Court of Human Rights that the rules on admissibility, including the time limit, must be applied with a degree of flexibility and without excessive formalism, taking account of their object and purpose and of the need to interpret and apply the Convention so as to make its safeguards practical and effective. The Court will therefore, in principle, retain the power to extend the time limit in cases where it can be shown that the application of the new four month limit would prevent practical and effective access to the Court.

4.18 While we have significant concerns about the impact of the shorter time limit on practical and effective access to the Court, on balance we do not consider this to be a reason not to ratify Protocol 15. We recommend a concerted effort by the Government, assisted by the national human rights institutions and civil society, to ensure that the change in the time limit is widely known in the UK before the end of the transitional period, and look to the European Court of Human Rights for the appropriate use of its judicial discretion when applying the new shorter time limit to prevent injustice in individual cases.

Tightening the "significant disadvantage" admissibility criterion

4.19 Article 5 of Protocol 15 makes a further change to the admissibility criteria, by amending the "significant disadvantage" admissibility criterion in a way which is intended to raise the admissibility threshold.

4.20 The Convention currently provides that the Court shall declare inadmissible any individual application if it considers that the applicant has not suffered a "significant disadvantage", unless (1) respect for human rights requires an examination of the application on the merits and (2) provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.⁴⁸ The amendment deletes the second proviso, that the case must have been duly considered by a domestic tribunal, but leaves in place the first proviso that an application cannot be declared inadmissible if respect for human rights requires an examination of the application on the merits.

4.21 According to the Committee of Ministers' Explanatory Report, this amendment is intended to give greater effect to the principle that the Court should not be concerned with trivial matters.49 The Government's Explanatory Memorandum goes further in its explanation of this amendment. It explains that the "significant disadvantage" criterion in the Convention was itself introduced by Protocol 14 to give effect to the principle that the Court should not be concerned with trivial matters, but according to the Government "that criterion has been used only a limited number of times." The Memorandum says that "one perceived problem was that its use was prevented where a matter had not been considered by a domestic court, yet a matter too trivial for the Court could well also be too trivial for a domestic court." In the Brighton Declaration it was therefore agreed to delete the proviso.50

4.22 The Court sees "no difficulty" with this proposal.⁵¹ Four of the five submissions we received, however, expressed concern about the removal of a valuable safeguard against the risk of a denial of justice. The human rights NGOs, for example, regret this amendment because it removes a safeguard which sought to ensure that the case is duly examined by at least one judicial body. According to the NGOs, "however minor a case is deemed to be, it remains essential that no denial of justice shall be allowed to occur". The Law Society of Scotland expressed similar concerns about litigants being denied their rights. The EHRC was also not in favour of the proposal to delete the proviso, because of the risk that a case may be declared inadmissible where it was not properly considered by the national courts only on procedural grounds. ILPA regarded the removal of the safeguard as unwelcome because it "strengthens the relative position of national executives against all forms of judicial control and supervision of rights."

4.23 We note that the proviso, which is removed by this amendment, that a case must have been "duly considered by a domestic tribunal" before it can be declared inadmissible on the ground that the applicant has not suffered a significant disadvantage, was indeed intended as a safeguard when the "significant disadvantage" admissibility criterion was introduced by Protocol 14.

4.24 We have considered carefully whether, in view of the substantial backlog of cases before the Court, it should be required to treat as admissible any case which has not been duly considered by a domestic tribunal, "however minor", as the NGOs argue.

4.25 We welcome the objective of ensuring that the "significant disadvantage" admissibility threshold protects the Court against having to consider trivial matters. We draw to Parliament's attention the concerns that have been expressed about the potential effect that this amendment may have on the right of access to a judicial remedy for violation of a Convention right. On balance, however, bearing in mind that the remaining safeguard prevents an application being declared inadmissible if respect for human rights requires it to be examined, we consider that the amended Convention will still enable the Court to strike the right balance between not having to consider trivial matters and ensuring that victims of human rights violations are not deprived of their right of access to a court to have their claim determined. We therefore do not consider those concerns to be a reason for not ratifying Protocol 15. We expect the

⁴⁹ Explanatory Report, para. 23, where the principle is expressed as the maxim de minimis non curat praetor (a court is not concerned by trivial matters).

⁵⁰ Brighton Declaration, para. 15(c).

⁵¹ Court's Opinion on the draft Protocol, para. 13.

Court to apply the amended "significant disadvantage" admissibility criterion in a way which preserves practical and effective access to the Court for violations of Convention rights.

Other changes to the ECHR machinery 5

5.1 The two remaining amendments made to the Convention by Protocol 15 are relatively uncontroversial and we deal with them briefly in order to ensure that Parliament is fully informed about all of the changes made by the Protocol.

Change to age rules for judges of the Court (Article 2)

5.2 Article 2 of Protocol 15 amends the current rules in the Convention concerning the age of judges of the Court. Judges are elected to the Court by the Parliamentary Assembly of the Council of Europe for one non-renewable term of nine years.⁵² The Convention currently provides that the terms of office of judges shall expire when they reach the age of 70.53 The Protocol removes that provision and replaces it with a requirement that "candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly."54 The amendment thereby, in effect, extends the age limit for judges from 70 to 74. The new age rules will only apply to candidates for election as judges after the entry into force of the Protocol, so no serving judges will have their term of office extended by this provision.⁵⁵

5.3 The purpose of the amendment is explained in the Committee of Ministers' Explanatory Report and the Government's Explanatory Memorandum. The current age limit of 70 has the effect of preventing certain experienced judges from completing their term of office.⁵⁶ There is no requirement that a judge elected to the Court be able to serve a minimum period before reaching the age of 70, although according to Council of Europe guidelines they should be able to serve at least half their term.⁵⁷ It was considered no longer essential to impose an age limit, given the fact that judges' terms of office are no longer renewable.

5.4 The Brighton Conference considered the authority and credibility of the Court and concluded that it is in principle undesirable for any judge to serve less than the full term of office provided for in the Convention, because a stable judiciary promotes the consistency of the Court.58 The purpose of the amendment to the Convention is therefore to reinforce the consistency of the membership of the Court by enabling highly qualified judges to serve the full nine-year term of office even where the nine year term does not expire until after they have reached the age of 70.

5.5 The Court, in its Opinion on the draft Protocol, welcomed this change, which it said "should be beneficial in future by fostering the election of very highly experienced

⁵² ECHR Article 23(1).

⁵³ ECHR Article 23(2).

⁵⁴ New Article 21(2) ECHR.

⁵⁵ Protocol 15 Article 8(1).

⁵⁶ Explanatory Report, para. 12.

⁵⁷ Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights (28 March 2012).

⁵⁸ Brighton Declaration, para. 24.

candidates as judges, whose services may be retained beyond an age limit that no longer seems imperative in the present day."59

5.6 None of the submissions that we received in response to our call for evidence objected to this provision.

5.7 We welcome the change to the age rules for judges of the Court. It is an uncontroversial amendment of the Convention which, as well as promoting the stability and therefore consistency of the Court, should also have the beneficial effect of increasing the number of serving senior judges who may consider applying to be a judge on the Court. We hope that this will encourage a wider range of applicants to apply for the position of UK judge on the Court in future, including senior judges.

Removal of veto on relinquishment of jurisdiction to Grand Chamber (Article 3)

5.8 Article 3 of Protocol 15 removes the current right of one of the parties to a case which is before a Chamber of the Court to object to the Chamber relinquishing jurisdiction over the case to the Grand Chamber. Under the current provision in the Convention, where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or its Protocols, or where the Chamber envisages resolving a question before it inconsistently with a previous judgment of the Court, the Chamber may relinquish jurisdiction over the case to the Grand Chamber, "unless one of the parties to the case objects."60

5.9 This change was proposed by the Court itself, which has recently modified its Rules of Court concerning relinquishment of jurisdiction so as to make it obligatory for a Chamber to relinquish jurisdiction to the Grand Chamber where it envisages departing from settled case-law, in order to enhance consistency.⁶¹ Removal of the parties' right to object to relinquishment to the Grand Chamber is intended to reinforce this development and so contribute further to consistency in the Court's case-law.⁶²

5.10 The Committee of Ministers' Explanatory Report on the Protocol identifies as another aim of this amendment the speeding up of proceedings before the Court in cases which raise a serious question affecting the interpretation of the Convention or its Protocols or a potential departure from existing case-law.⁶³ The Explanatory Report envisages that the Chamber will consult the parties before deciding to relinquish jurisdiction over a case to the Grand Chamber and also narrow the scope of the case before relinquishing it, and the Court in its Opinion on the draft Protocol indicated that this will indeed be the practice when the Protocol comes into effect, and that the Grand Chamber will make clear to the parties the issues that they should address in depth.

5.11 Of the submissions we received which mentioned this amendment, all were in favour of it. The human rights NGOs who responded to our call for evidence welcome it, on the

⁵⁹ See Opinion of the Court on Draft Protocol No. 15 to the European Convention on Human Rights, adopted on 6 February 2013, para. 6.

⁶⁰ ECHR Article 30.

⁶¹ Rule 72 of the Rules of Court.

⁶² Explanatory Report, para. 16.

⁶³ Ibid., para. 17.

grounds that it will provide greater opportunity for the Grand Chamber to ensure that the Convention is interpreted and implemented across the Council of Europe region in a consistent manner, so strengthening human rights protection in Europe. The EHRC also welcomes it on the ground that it addresses the often expressed concern about lack of consistency in the Court's case-law. The Law Society of Scotland also approves of this amendment.

5.12 We welcome the removal of the parties' veto over relinquishment of jurisdiction to the Grand Chamber. It is a relatively technical and uncontroversial change, proposed by the Court itself, which should have the beneficial effects of both improving the consistency of the case-law of the Court and speeding up the examination of important cases by the Grand Chamber.

Conclusion 6

Should Protocol 15 be ratified?

6.1 Under Part 2 of the Constitutional Reform and Governance Act 2010, which now prescribes the procedure for the ratification of treaties, the Government cannot proceed to ratification of the Protocol until the expiry of a period of 21 sitting days after the treaty has been laid before Parliament by the Minister. The treaty may not be ratified if during the 21 day period the House of Commons resolves that the treaty should not be ratified. If, during that period, the House of Lords resolves that the treaty should not be ratified, the Government cannot ratify the treaty unless the Minister has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.⁶⁴

6.2 We conclude that Protocol 15 should be ratified. As we have indicated in this Report, some legitimate concerns have been raised about the changes to the admissibility criteria, but considering the potentially beneficial effect of the amendment of the Preamble to the Convention and the other amendments, and the fact that the Protocol cannot at this stage be amended, and that to come into force it must be signed and ratified by all 47 Council of Europe members, in our view the balance of considerations is strongly in favour of ratification by the UK at the earliest opportunity.

Parliamentary debate on Protocol 15

6.3 In our view it would be desirable for there to be a parliamentary debate about the Protocol in either House, or both. The purpose of such a debate would be to raise awareness within Parliament and beyond of the significance of Protocol 15, and in particular of the amendment to the Preamble, in an informed way, with the benefit of our Report explaining both the background to the Protocol, and the opportunities afforded to parliamentarians by the new emphasis on subsidiarity.

6.4 We recommend that there is a debate in both Houses to take note both of Protocol 15 and the Committee's Report on it, in order to raise awareness in both Houses of the significance of the Protocol, and in particular the amendment to the Preamble to refer to subsidiarity and the margin of appreciation. We recommend that the Government takes the necessary steps to facilitate a debate in both Houses in Government time.

Protocol 16

6.5 As the Written Ministerial Statements mention, the Brighton Declaration also included agreement in principle to the drafting of Protocol 16 to the Convention, which creates an optional system by which the highest national courts can choose to seek advisory opinions on the interpretation of the Convention from the European Court of Human Rights. Protocol 16 was adopted and opened for signature on 2 October 2013. It will come into force once it has been ratified by 10 States Parties, and will apply only to those countries that have ratified it. As the second recital in the preamble to Protocol 16 indicates, it is

considered that "the extension of the Court's competence to give advisory opinions will further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity."

6.6 The Government intends neither to sign nor ratify Protocol 16 at this time. It says that while it was pleased to help secure agreement on advisory opinions in the Brighton Declaration, "it has long made clear that it is unconvinced of their value, particularly for addressing the fundamental problems facing the Court and the Convention system." The Government therefore merely intends to observe how the system of advisory opinions operates in practice, having regard in particular to the effect on the workload of the Court and to how the Court approaches the giving of opinions.

6.7 Since Protocol 16 has not been laid before Parliament, we do not report on it in this Report. However, while the Government has made clear that it does not intend to sign or ratify Protocol 16, it has not placed in the public domain a detailed, reasoned justification of that position. We have therefore written to the Government asking for a more detailed explanation of its reasons for deciding not to sign or ratify Protocol 16.

Current and future reform of the Court

6.8 The Government's Explanatory Memorandum refers to the ongoing process of reform of the Court and states that further reform is required both to address the continued backlog of cases pending before the Court, which remains at about 80,000, and "to address further the important questions about the balance between the obligations of the High Contracting Parties at national level and the role of the Court and the wider Convention system in the implementation of the Convention." Expert working groups at the Council of Europe are currently working on the options for future reform, with a view to reporting to the Committee of Minister on the full range of potential options by the end of 2015. We may comment on some of these matters in our forthcoming Report on Human Rights **Judgments in the 2010–15 Parliament.**

Conclusions and recommendations

Introduction

- 1. We are grateful to the Government for agreeing to extend the scrutiny period by eight sitting days, but it is doubtful that this will provide sufficient time for us or our Members to secure a debate in both Houses before the end of the scrutiny period. In our view the subject-matter of the Protocol is sufficiently significant to warrant that the Government make such a debate possible in both Houses. (Paragraph 1.5)
- 2. For reasons we explain in detail in this Report, we recommend that Protocol 15 should be ratified by the Government, but we also recommend that there should be a debate in both Houses on the Protocol before the Government does so, and that the Government should arrange such a debate in Government time. (Paragraph 1.6)
- 3. We welcome the Government's preparedness to extend the period of time between laying the Protocol before Parliament and proceeding to ratification in order to give us an opportunity to report on the Protocol and Parliament an opportunity to debate it. (Paragraph 1.10)
- 4. In this Report we recommend that the Protocol should be ratified by the Government but we also recommend that it should be debated in both Houses in order to raise awareness, within Parliament and beyond, of the significance of the Protocol and in particular of the amendment to the Preamble to the Convention to refer to subsidiarity and the margin of appreciation. We recommend that the Government make the necessary arrangements for a debate on the Protocol in Government time in both Houses. (Paragraph 1.16)

Background and effect of Protocol 15

- We welcome the emphasis in the Brighton Declaration on the importance of 5. national implementation of the Convention, and on the primary responsibility of States to secure Convention rights in their national legal system. We agree with the Government that better national implementation of the Convention is the key to securing the long-term survival of the European Court of Human Rights and the entire Convention system. In the long run, the only way to prevent the Court from being overwhelmed by the sheer volume of applications is to prevent those cases from arising in the first place. This is partly a matter of ensuring that remedies are available at the national level for violations of Convention rights. But, equally importantly, it is a matter of preventing such violations from arising in the first place at the national level. (Paragraph 2.11)
- 6. We also welcome the Prime Minister's recognition in his 2012 speech to the Parliamentary Assembly of the Council of Europe that parliaments have a "key role" in implementing the Convention at the national level, and his endorsement of the role of our Committee. Of all the organs of the state, parliaments are the best-placed institution to prevent violations of the Convention from arising in the first place, or to prevent repeats of violations which have been found to have already taken place.

While national courts can provide remedies for violations of Convention rights, national parliaments have an important preventive role: by scrutinising laws carefully for Convention compatibility, they can prevent violations from arising in the first place, and by trying to bring about the full and timely implementation of judgments they can prevent large numbers of repetitive applications. Parliaments can therefore help to ease the backlog of cases before the Court by reducing the number of applications which need to be made. (Paragraph 2.12)

- 7. We also welcome the commitments made in the Brighton Declaration to take some specific practical measures designed to enhance the role of parliaments in ensuring effective implementation, such as offering to national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the Government, and the encouragement to facilitate the important role of national parliaments in scrutinising the effectiveness of the measures taken by governments to implement judgments of the Court. (Paragraph 2.13)
- While some of the changes to the text of the Convention made by Protocol 15 are 8. relatively technical and uncontroversial in nature, it also contains some important provisions amending the admissibility criteria which will potentially affect the ability of individuals to obtain practical and effective access to the Court, and one provision which, as the Government's Explanatory Memorandum rightly observes, "goes to the heart of current domestic and international debates about the role of the Court and its relationship with the High Contracting Parties to the Convention." In the remainder of this Report we consider the provisions of the Protocol in what we consider to be the order of their significance. (Paragraph 2.16)

Addition to the Preamble to the ECHR

- 9. We welcome the clarification in the explanatory material accompanying Protocol 15 which makes clear that the terms "subsidiarity" and "margin of appreciation" in the amended Preamble are to be interpreted in accordance with the Court's wellestablished case-law. The explanatory material also makes clear that the proposal to include a reference to the principle of subsidiarity and the doctrine of the margin of appreciation "as developed in the Court's case-law", was not intended to dilute in any way the States' commitment to give full effect to their obligation to secure the rights and freedoms defined in the Convention, which was explicitly recalled in the same paragraph of the Brighton Declaration. (Paragraph 3.9)
- The "principle of subsidiarity" referred to in the amended Preamble is therefore the principle that national governments, parliaments and courts have the primary responsibility for securing for everyone within their jurisdiction the rights and freedoms defined in the Convention, and for providing an effective remedy before a national authority for everyone whose rights and freedoms are violated. The "margin of appreciation" referred to in the amended Preamble is the doctrine that, subject to the supervisory jurisdiction of the Strasbourg Court, States enjoy a degree of latitude in deciding from a range of possible ways in which the rights in the Convention may be implemented. The margin of appreciation is variable, and dependent on the circumstances of the particular case, and has no application at all in relation to

- certain rights, such as the right to life, the prohibition of torture or the ban on slavery or forced labour. (Paragraph 3.10)
- We draw to Parliament's attention the fact that subsidiarity and the margin of 11. appreciation, properly understood in the light of the Court's case-law, are not therefore concerned with the primacy of national law over Convention law, or with demarcating national spheres of exclusive competence. The Convention system is subsidiary, not to the political will of the national authorities, but to the national system for safeguarding human rights. Where that national system is well developed, and has led to detailed and reasoned assessment of a law or policy by the national authorities in light of the Convention and the principles in the Court's case-law, the assessment of the national authorities is likely to be within the State's margin of appreciation (depending on the nature of the right). (Paragraph 3.11)
- We welcome the amendment of the Preamble to the Convention to include reference to the principle of subsidiarity and the doctrine of the margin of appreciation. In our view, this simple textual amendment goes beyond merely making explicit in the Convention certain principles of interpretation developed by the Court. Rather, it signifies a new era in the life of the Convention, an age of subsidiarity, in which the emphasis is on States' primary responsibility to secure the rights and freedoms set out in the Convention. As the Court's recent case-law on the margin of appreciation makes clear, such a focus on subsidiarity requires the Court to pay close attention to the reasoned assessment of Convention compatibility by the national authorities: the Government when formulating the relevant policy and drafting the relevant law; Parliament when scrutinising and debating the law in question; and the courts when adjudicating on subsequent legal challenges to the compatibility of the law with Convention rights. (Paragraph 3.17)
- We welcome the Court's renewed attention to the reasoned assessment of Convention compatibility by the national authorities, because in the long run it will increase both the democratic legitimacy and the effectiveness of the Convention system, by encouraging both governments and parliaments to conduct their own detailed and reasoned assessments of Convention compatibility. We therefore draw to Parliament's attention the increased onus the amendment to the Preamble places on the Court to pay respectful attention to the reasoned assessment of the national authorities, and, in turn, the correspondingly greater onus on, first, Government departments to conduct such detailed assessments of the Convention compatibility of their laws and policies and, second, Parliament to subject the Government's assessment to careful scrutiny and debate. (Paragraph 3.18)
- **14.** We look to the Court to ensure that the insertion of references to subsidiarity and the margin of appreciation into the Preamble to the Convention will accelerate the recent trend in the Court's case-law on subsidiarity and the margin of appreciation; and we look to the Government to ensure that this will in turn lead to continued improvement in the quality of the human rights memoranda provided by Government departments to accompany Bills, and more opportunities for informed parliamentary consideration and debate of Convention compatibility issues. (Paragraph 3.19)

Changes to admissibility requirements

- We welcome the States Parties' express reaffirmation in the Brighton Declaration of their attachment to the right of individual application to the European Court of Human Rights and their recognition that the right to present an application is a cornerstone of the Convention system, the effective exercise of which must not be hindered by States in any way. We note that the changes to the admissibility requirements in Protocol 15 are intended to tighten those requirements and so reduce the volume of cases which reach the Court for decision on the merits. The changes therefore require careful scrutiny to ensure that they will not undermine the practical and effective exercise of the right of individual application. (Paragraph 4.4)
- All of the submissions that we received expressed concern about the reduction in the time limit because of the risk that it will undermine effective access to a remedy. (Paragraph 4.9)
- 17. We draw to Parliament's attention the fact that there is considerable concern about the reduction of the time limit for applying to the Court from six months to four months, because of the risk that in practice it will impede effective access to the Court, in particular for members of vulnerable groups who already face severe obstacles to securing practical and effective access to justice. (Paragraph 4.14)
- We have concerns about the extent to which that political pressure may undermine 18. the right of individual petition, and about some of the means by which the current backlog is being reduced. We intend to return to that issue, and whether the Court is receiving adequate resources to enable it to fulfil its role, in our forthcoming Report on Human Rights Judgments. (Paragraph 4.15)
- While we have significant concerns about the impact of the shorter time limit on practical and effective access to the Court, on balance we do not consider this to be a reason not to ratify Protocol 15. We recommend a concerted effort by the Government, assisted by the national human rights institutions and civil society, to ensure that the change in the time limit is widely known in the UK before the end of the transitional period, and look to the European Court of Human Rights for the appropriate use of its judicial discretion when applying the new shorter time limit to prevent injustice in individual cases. (Paragraph 4.18)
- We welcome the objective of ensuring that the "significant disadvantage" 20. admissibility threshold protects the Court against having to consider trivial matters. We draw to Parliament's attention the concerns that have been expressed about the potential effect that this amendment may have on the right of access to a judicial remedy for violation of a Convention right. On balance, however, bearing in mind that the remaining safeguard prevents an application being declared inadmissible if respect for human rights requires it to be examined, we consider that the amended Convention will still enable the Court to strike the right balance between not having to consider trivial matters and ensuring that victims of human rights violations are not deprived of their right of access to a court to have their claim determined. We therefore do not consider those concerns to be a reason for not ratifying Protocol 15. We expect the Court to apply the amended "significant disadvantage" admissibility

criterion in a way which preserves practical and effective access to the Court for violations of Convention rights. (Paragraph 4.25)

Other changes to the ECHR machinery

- We welcome the change to the age rules for judges of the Court. It is an 21. uncontroversial amendment of the Convention which, as well as promoting the stability and therefore consistency of the Court, should also have the beneficial effect of increasing the number of serving senior judges who may consider applying to be a judge on the Court. We hope that this will encourage a wider range of applicants to apply for the position of UK judge on the Court in future, including senior judges. (Paragraph 5.7)
- We welcome the removal of the parties' veto over relinquishment of jurisdiction to 22. the Grand Chamber. It is a relatively technical and uncontroversial change, proposed by the Court itself, which should have the beneficial effects of both improving the consistency of the case-law of the Court and speeding up the examination of important cases by the Grand Chamber. (Paragraph 5.12)

Conclusion

- 23. We conclude that Protocol 15 should be ratified. As we have indicated in this Report, some legitimate concerns have been raised about the changes to the admissibility criteria, but considering the potentially beneficial effect of the amendment of the Preamble to the Convention and the other amendments, and the fact that the Protocol cannot at this stage be amended, and that to come into force it must be signed and ratified by all 47 Council of Europe members, in our view the balance of considerations is strongly in favour of ratification by the UK at the earliest opportunity. (Paragraph 6.2)
- We recommend that there is a debate in both Houses to take note both of Protocol 24. 15 and the Committee's Report on it, in order to raise awareness in both Houses of the significance of the Protocol, and in particular the amendment to the Preamble to refer to subsidiarity and the margin of appreciation. We recommend that the Government takes the necessary steps to facilitate a debate in both Houses in Government time. (Paragraph 6.4)
- Since Protocol 16 has not been laid before Parliament, we do not report on it in this 25. Report. However, while the Government has made clear that it does not intend to sign or ratify Protocol 16, it has not placed in the public domain a detailed, reasoned justification of that position. We have therefore written to the Government asking for a more detailed explanation of its reasons for deciding not to sign or ratify Protocol 16. (Paragraph 6.7)
- We may comment on some of these matters in our forthcoming Report on Human Rights Judgments in the 2010–15 Parliament. (Paragraph 6.8)

Declaration of Lords' Interests

Lord Lester of Herne Hill

Board Member, Open Society Justice Initiative; and President, Interights

Baroness Lister of Burtersett

Patron, Just Fair

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-oflords-interests/

Formal Minutes

Wednesday 26 November 2014

Members present:

Dr Hywel Francis, in the Chair

Mr Virendra Sharma Sarah Teather

Baroness Berridge Baroness Kennedy of the Shaws Lord Lester of Herne Hill Baroness Lister of Burtersett

Baroness O'Loan

Draft Report (Protocol 15 to the European Convention on Human Rights), proposed by the Chair, brought up and read.

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

Paragraphs 1.1 to 6.8 read and agreed to.

Resolved, That the Report be the Fourth 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 26 November at 2.15 pm

List of Reports from the Committee during the current Parliament

Session 2014-15

First Report Legal aid: children and the residence test HL Paper 14/HC 234 **Second Report** Legislative Scrutiny: (1) Serious Crime Bill, (2) HL Paper 49/HC 746 Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill **Third Report** Legislative Scrutiny: (1) Modern Slavery Bill and (2) HL Paper 62/HC 779 Social Action, Responsibility and Heroism Bill **Fourth Report** Protocol 15 to the European Convention on HL Paper 71/HC 837 **Human Rights**

Session 2013-14

First Report Human Rights of unaccompanied migrant children HL Paper 9/HC 196 and young people in the UK **Second Report** Legislative Scrutiny: Marriage (Same Sex Couples) HL Paper 24/HC 157 Legislative Scrutiny: Children and Families Bill; **Third Report** HL Paper 29/HC 452 **Energy Bill Fourth Report** Legislative Scrutiny: Anti-social Behaviour, Crime HL Paper 56/HC 713 and Policing Bill Fifth Report Legislative Scrutiny: Transparency of Lobbying, HL Paper 61/HC 755 Non-party Campaigning, and Trade Union Administration Bill Sixth Report Legislative Scrutiny: Offender Rehabilitation Bill HL Paper 80/HC 829 Seventh Report The implications for access to justice of the HL Paper 100/HC 766 Government's proposals to reform legal aid **Eighth Report** Legislative Scrutiny: Immigration Bill HL Paper 102/HC 935 Ninth Report Legislative Scrutiny: Anti-social Behaviour, Crime HL Paper 108/HC 951 and Policing Bill (second Report) **Tenth Report** Post-Legislative Scrutiny: Terrorism Prevention and HL Paper 113/HC 1014 **Investigation Measures Act 2011 Eleventh Report** Legislative Scrutiny: Care Bill HL Paper 121/HC 1027 Twelfth Report Legislative Scrutiny: Immigration Bill (second HL Paper 142/HC 1120 Report) Thirteenth Report The implications for access to justice of the HL Paper 174/ HC 868 Government's proposals to reform judicial review Fourteenth Report Legislative Scrutiny: (1) Serious Crime Bill and (2) HL Paper 189/HC 1293 **Deregulation Bill**

Session 2012-13

First Report Draft Sexual Offences Act 2003 (Remedial) Order HL Paper 8/HC 166

	2012: second Report	
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	
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:	HL Paper 192/HC 1483

	Stop and Search without Reasonable Suspicion (second Report)	
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 Punishment of Offenders Bill	HL Paper 237/HC 1717
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