

Debate Pack

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Role of British and overseas judges in Hong Kong

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1 Background summary

A Westminster Hall debate on the role of British and overseas judges in Hong Kong is scheduled for Wednesday 30 March 2022, from 9.30-11.00am. The debate will be led by Sir Iain Duncan Smith MP.

1.1 UK-Hong Kong relationship and the Hong Kong National Security Law

Hong Kong was a British colony from 1842 until the UK transferred sovereignty over Hong Kong to the People's Republic of China in 1997, after which it became a Special Administrative Region of China. In preparation of the handover, in 1984 Great Britain and China agreed the [Joint Declaration on the Question of Hong Kong \(Joint Declaration\)](#).

Joint Declaration

The Joint Declaration states that the Hong Kong Special Administrative Region (SAR) will be directly under the authority of the People's Republic of China but will enjoy a "high degree of autonomy" and its social and economic systems and lifestyle will remain unchanged for fifty years.

However, in recent years there has been growing concern the principle 'One Country, Two Systems', in which Hong Kong is part of China but has separate legal and economic systems, is being steadily eroded. The UK Government has catalogued such fears in its [six-monthly reports on Hong Kong](#), as has the Foreign Affairs Committee in reports on [Hong Kong](#) and [China](#) (PDF) in 2015 and 2019.

The Joint Declaration is a legally binding treaty, but it contains no enforcement provisions.

National security law

China was alarmed by the [mass protests in 2014](#) and [2019](#) in Hong Kong that brought hundreds of thousands of pro-democracy supporters out on the streets, and the success of pro-democracy politicians in the island's 2019 local elections.

In June 2020, the Chinese Government introduced a [new national security law in Hong Kong](#). The legislation criminalises any act of:

- secession – breaking away from the country;
- subversion – undermining the power or authority of the central government;

- terrorism – using violence or intimidation against people; and
- collusion with foreign or external forces.

The law established a new Beijing-led security office in Hong Kong, with its own law enforcement personnel – neither of which would come under the local authority’s jurisdiction. Hong Kong’s political leader, Chief Executive Carrie Lam, now has the power to appoint judges to hear national security cases. Beijing will also have power over how the law should be interpreted, rather than any Hong Kong judicial or policy body. If the law conflicts with any Hong Kong law, the Beijing law takes priority.

The National Security Law also states it applies to anyone regardless of where they live in the world or if they are a citizen and/or resident of Hong Kong.

UK response

The UK Government have said that the National Security Law is a “[clear and serious violation](#)” of the [Joint Declaration](#).

The UK Government has [responded with](#) three main actions since the National Security Law was passed in Hong Kong.

First, it suspended the UK’s extradition treaty with Hong Kong.

Second, it extended the [embargo on certain military items](#) already imposed on mainland China (in response to the 1989 Tiananmen Square repression), to Hong Kong. It had already in June 2019 restricted the sale of crowd control equipment to Hong Kong.

Third, it announced it would open a new visa route to people from Hong Kong who have British National (Overseas) – ‘BN(O)’ – status and their close family members. The [Hong Kong British National \(Overseas\) visa](#) launched on 31 January 2021. There were 103,900 applications for the visa in 2021 according to [Home Office statistics](#).

China’s response to criticism

In May 2020, China’s Embassy in the UK put out [a statement on Hong Kong’s national security legislation](#) saying it is “purely China’s internal affair, which no foreign country has the right to interfere in”.

It described the 2019 protests as “increasingly rampant activities by the “Hong Kong independence” elements, and radical and separatist force”, and that there was “escalating violence and terrorist activities”.

The statement also said the “One Country, Two Systems” and the “high degree of autonomy” envisaged under the system had been “implemented faithfully” since Hong Kong’s handover.

1.2

UK Judges on the Hong Kong Court of Final Appeal

Historical context – Commonwealth appeals

When Hong Kong was a British Overseas Territory, its final court of appeal was the Judicial Committee of the Privy Council (JCPC). This arrangement was the norm for many, but not all, Commonwealth jurisdictions. To this day, the JCPC remains the final court of appeal for all three Crown Dependencies (Jersey, Guernsey and the Isle of Man), some British Overseas Territories (including Bermuda), some independent realms (including Jamaica), and some independent republics (including Trinidad and Tobago).

The judges that serve on the JCPC are predominantly the permanent justices of the UK Supreme Court, though they are often supplemented by senior UK judges and occasionally senior judges from the relevant Commonwealth jurisdiction(s).

The creation of the Final Court of Appeal

Following the formation of the Hong Kong Special Administrative Region in 1997, the JCPC's jurisdiction in relation to Hong Kong ended. In its place, the [Hong Kong Court of Final Appeal](#) (HKCFA) was created.

In accordance with the law of Hong Kong, the HKCFA has a varied membership. The Court currently has 20 judges. There are four permanent appointees, including the Chief Justice and three other justices. There are then judges appointed on renewable fixed-terms. Four of these are from Hong Kong, but 12 others are judges who serve or served predominantly in other common law jurisdictions.

Currently, the HKCFA includes judges otherwise or previously based in the UK, Australia and Canada. In the past, it has also included justices from New Zealand.

UK judges serving on the Hong Kong court

The involvement of active UK judges in the work of the HKCFA is underpinned by an agreement reached in September 1997. The then Lord Chancellor, Lord Irvine of Lairg and the then Chief Justice of Hong Kong announced that two serving Law Lords would sit on the court, as part of the UK's continuing commitment to safeguarding the rule of law in Hong Kong.

Since the creation of the UK Supreme Court in 2009, this arrangement has continued, but with justices of the Supreme Court. Additionally, several retired UK judges continue to serve the HKCFA, independently of that arrangement.

Of the 12 justices from non-Hong Kong jurisdictions, eight previously served as a Law Lord and/or Justice of the UK Supreme Court.

- two of those, Lord Reed of Allermuir and Lord Hodge, are serving justices of the UK Supreme Court (the President and Deputy President, respectively);
- a further five are former Justices of the UK Supreme Court, having since retired from that post (of which two are former Presidents); and
- one UK judge, Lord Hoffmann, retired as a Law Lord prior to the creation of the UK Supreme Court.

1.3 Regulation of conduct of UK judges

The judiciary in the UK is independent of the executive, and for most purposes is self-regulating as to conduct and discipline.

The Oath or Affirmation

When judges are appointed to the UK Supreme Court, or any other UK court, they take a judicial oath or affirmation. Part of that swears or affirms that they “will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will”.¹

Guides to Judicial Conduct

The UK Supreme Court has a [Guide to Judicial Conduct](#) (PDF), most recently reissued in 2019, setting out the expected behaviour of its justices.² This is supplemented by a [Guide to Conduct for Members of the Supplementary Panel](#) (PDF) last updated in August 2021.³ Members of the Supplementary Panel occasionally sit on Supreme Court cases, but are not, or no longer, themselves justices of the Court.

There is also a [Guide to Judicial Conduct](#), most recently reissued in September 2020, applicable to judges elsewhere in HM Courts and Tribunals service.⁴

None of these guidance documents comment explicitly on the appropriateness of external judicial appointments. They do, however, provide guidance about the independence, impartiality, integrity and propriety of the judiciary, and the influence that “outside activities” may have on those core values.

¹ HM Judiciary, [Oaths](#)

² UK Supreme Court, [Guide to Judicial Conduct](#) (PDF), 2019

³ UK Supreme Court, [Guide to Conduct for Members of the Supplementary Panel](#), 2021

⁴ HM Judiciary, [Guide to Judicial Conduct](#), 2020

Potentially relevant constraints

On impartiality, the UK Supreme Court Guidance states:

Each Justice will seek to avoid extra-judicial activities that are likely to cause him or her to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity.⁵

On integrity, it adds:

[Justices] will try to avoid situations which might reasonably lower respect for their judicial office, or cast doubt upon their impartiality as judges, or expose them to charges of hypocrisy. They will try to conduct themselves in a way which is consistent with the dignity of their office.⁶

On “outside activities” the UKSC Guidance says, among other things:

Justices may serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge.⁷

1.4

Controversy around UK judges on the HKCFA

The President of the UK Supreme Court, Lord Reed of Allermuir, has twice issued an official statement regarding the participation of UK judges on the HKCFA. The first was [in July 2020](#) and the second was [in August 2021](#).

July 2020 statement

In July 2020 Lord Reed pointed to the influence of UK Supreme Court judges sitting on the body, saying they:

have made an important contribution to the work of the Court of Final Appeal, not only in civil and commercial cases, but also in cases concerned with rights of protest and free speech.

He also emphasised that, under the bilateral arrangement, the two judges serving concurrently on the UK Supreme Court and the HKCFA do not receive additional remuneration. Instead, a fee is paid to the UK Supreme Court for the services provided.

Directly addressing Hong Kong’s new national security law, he said:

The new security law contains a number of provisions which give rise to concerns. Its effect will depend upon how it is applied in practice. That remains to be seen. Undoubtedly, the judges of the Court of Final Appeal will do their utmost to uphold the guarantee in Article 85 of the Hong Kong Basic Law that ‘the Courts of the Hong Kong Special Administrative Region shall exercise

⁵ UK Supreme Court, [Guide to Judicial Conduct](#) (PDF), 2019, para 3.2

⁶ para 4.2

⁷ para 5.6

judicial power independently, free from any interference.' As the Chief Justice of Hong Kong, the Hon Geoffrey Ma, recently said: 'The independence of the Judiciary and the rule of law are cornerstones of the Hong Kong community, and they are guaranteed under the Basic Law. It remains the mission and the constitutional duty of the Hong Kong Judiciary to maintain and protect them.'

The Supreme Court supports the judges of Hong Kong in their commitment to safeguard judicial independence and the rule of law. It will continue to assess the position in Hong Kong as it develops, in discussion with the UK Government.

The appropriateness of UK judges continuing to serve on the court was, Lord Reed said, being kept under review:

Whether judges of the Supreme Court can continue to serve as judges in Hong Kong will depend on whether such service remains compatible with judicial independence and the rule of law.

August 2021 statement

The most recent position on the arrangement to be set out by Lord Reed was his statement of August 2021:

I have been closely monitoring and assessing developments in Hong Kong, in discussion with the Foreign Secretary and the Lord Chancellor. Together, we have been reviewing the operation of the agreement under which UK judges have served there since 1997 in the light of those developments.

At this time, our shared assessment is that the judiciary in Hong Kong continues to act largely independently of government and their decisions continue to be consistent with the rule of law.

There also continues to be widespread support amongst the legal community in Hong Kong for the participation of UK and other overseas judges in the work of the Hong Kong Court of Final Appeal

Under these circumstances, Lord Hodge and I remain engaged in the Court of Final Appeal with the full support of the Foreign Secretary and the Lord Chancellor.

I am scheduled to sit from 31 August to 3 September and Lord Hodge is scheduled to sit before the end of 2021.

I will continue to assess the position in Hong Kong as it develops, in discussion with the UK Government.

1.5

UK judges presiding over non-UK courts

The UK's history of Empire and Commonwealth is such that legal practitioners, including judges, would often serve, or have served, in other common law jurisdictions.

The Commonwealth dimension

For example, Baron Cooke of Thorndon, a Lord of Appeal in Ordinary, spent most of his legal career in New Zealand, becoming a Court of Appeal judge there. Upon retiring from the Court of Appeal in 1996, he was given a life peerage and became a Law Lord in the UK, serving in the Appellate Committee of the House of Lords until 2001 and on the Judicial Committee of the Privy Council. He also served, from time to time, in senior courts in Samoa, Kiribati, the Cook Islands, Fiji and Hong Kong.

Pan-European and international courts

The UK's judiciary is, or has been, represented in other, international, courts.

For example, each member of the Council of Europe nominates a judge to sit on [the European Court of Human Rights](#) in Strasbourg. This post is not usually held concurrently with domestic judicial office, but the UK sometimes also provides ad hoc judges to serve on the Court who are serving domestic judges. Lord Reed, the current President of the UK Supreme Court, has in the past served as an ad hoc Strasbourg judge.

Similarly, while the UK was a member of the European Union, it had a judge serving on [the Court of Justice of the European Union](#), and there was always an Advocate-General from the UK. As with the European Court of Human Rights, these posts typically were not held concurrently with domestic judicial office.

Since the creation of [the International Criminal Court](#) (ICC) in 2002, there has always been a UK judge on its bench. Sir Adrian Fulford, who served as an ICC judge from 2003-2012, was already a High Court judge in England and Wales prior to his appointment. He continued to serve as a High Court judge, presiding over a number of high profile domestic cases, throughout his term of office with the ICC.

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Press and media articles

The following is a selection of press and media articles relevant to this debate.

Please note: the Library is not responsible for either the views or accuracy of external content.

[Is it time for UK judges to leave HK?](#)

A Lawyer Writes [blog]

Joshua Rozenberg

18 Feb 2022

[British judge cleared way for jailing of rebel Hong Kong MP](#)

The Times (Subscription required)

Jonathan Ames

18 Feb 2022

[Foreign judges are enabling Hong Kong's legal crackdown](#)

The Diplomat

Eric Lai

11 Feb 2022

[The Times' view on UK justices in Hong Kong: Judgment Call](#)

The Times leading article (Subscription required)

2 Feb 2022

[British judges ready to enforce national security law in Hong Kong](#)

The Times (Subscription required)

Jonathan Ames and Alvin Lum

2 Feb 2022

[Supreme Court not feeling government 'pressure' over JR – Reed](#)

Law Gazette

Sam Tobin

24 January 2022

[Top Hong Kong court rules against government bid to expand riot prosecutions](#)

The Guardian

4 Nov 2021

[Alistair Carmichael MP: It's time to remove British judges from Hong Kong](#)

The Times (Subscription required)

14 Oct 2021

[The Supreme Court's shameful statement on Hong Kong](#)

The Spectator (Subscription required)

Johnny Patterson

27 Aug 2021

[Hong Kong electoral reform: LegCo passes 'patriots' law](#)

The Guardian

27 May 2021

[You should quit Hong Kong's top court now, UK judges are told](#)

The Times (Subscription required)

Jonathan Ames

12 Mar 2021

[UK mulls pulling judges from Hong Kong in wake of security law](#)

Al Jazeera

Jerome Favre

24 Nov 2020

[Role of UK judges in Hong Kong appeal court comes under scrutiny](#)

The Guardian

Owen Bowcott

2 Jul 2020

[Hong Kong security law: What is it and is it worrying?](#)

BBC News Online

Anthony Wallace

30 Jun 2020

[Boris Johnson on the Hong Kong crisis: We will meet our obligations, not walk away](#)

The Times (Subscription required)

3 Jun 2020

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Press releases

Hong Kong national security law undermines rule of law

Law Society

7 July 2020

News that China has passed a national security law applicable in Hong Kong has been met with alarm by the Law Society of England and Wales and the Bar Council.

The Law Society of England and Wales is concerned about many aspects of the national security law, particularly those affecting the right to a fair trial and other human rights, as well as judicial independence.

The crimes of subversion, secession, terrorism and collusion with foreign powers included in the law, are vaguely defined and sentencing provisions are unclear about what constitutes a grave or minor offence. This is especially important since the maximum sentence is life imprisonment and the law includes mandatory minimum sentences that may be disproportionate in some cases.

Although the law refers to fundamental rights and the rule of law, the provisions of the national security law allow for an application which would restrict such rights as freedom of expression, freedom of assembly, and the right to a fair trial.

A Law Society of England and Wales spokesperson said: “The provisions of the national security law raise grave concerns that the rule of law and judicial independence in Hong Kong are being undermined.

“The law could be used to stem dissent, as well as to arrest and criminally prosecute persons who legally exercise their internationally recognised human rights.

Adding that “we will monitor the application of this law in practice and stand in solidarity with legal professionals in Hong Kong and others in their efforts to uphold the rule of law and fundamental rights in their jurisdiction.”

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PQs

Judges: Hong Kong Court of Final Appeal

16 Mar 2022 | 135511

Asked by: Sarah Champion

To ask the Secretary of State for Justice, what the total expenses claimed by UK judges relating to their service in the Hong Kong Court of Final Appeal were on (a) flights, (b) accommodation, (c) subsistence and (d) any additional expenses relating to their service on Hong Kong's Court of Final Appeal in (i) 2019, (ii) 2020 and (iii) 2021.

Answering member: James Cartlidge | Ministry of Justice

The flights and other expenses incurred by UK Supreme Court justices for their sittings on the Hong Kong Court of Final Appeal are settled directly by the Hong Kong Court. The UK Supreme Court holds no information about expenses related to justices sitting in Hong Kong, nor do they have information about fees or expenses for retired UK judges that sit on the Hong Kong Court.

Judges: Hong Kong Court of Final Appeal

28 Feb 2022 | 125179

Asked by: Sarah Champion

To ask the Secretary of State for Justice, what sum the UK Supreme Court received in fees from the Hong Kong authorities for the service of UK judges sitting on Hong Kong's Court of Final Appeal in (a) 2019, (b) 2020 and (c) 2021.

Answering member: James Cartlidge | Ministry of Justice

Serving justices of the UK Supreme Court receive a salary and do not receive any additional fees when sitting on the Hong Kong Court of Final Appeal. The Hong Kong Court of Final Appeal pays a fee to the UK Supreme Court.

In 2019 the UK Supreme Court received £31,913.70 for sittings undertaken by justices.

No fees were received in 2020 as no justices sat on the Hong Kong Court of Final Appeal.

The total fees the Supreme Court will receive for the justices' sittings in 2021 have not yet been confirmed.

[Hong Kong: Political Prisoners](#)

22 Feb 2022 | 819 c119

Asked by: Lord Carlile of Berriew

My Lords, given that it is now palpably clear that human rights are under severe attack in Hong Kong, how much longer does the review of UK judges' position have to take before they are firmly advised to play no further part in the Hong Kong judicial system?

Answered by: The Earl of Courtown

My Lords, the noble Lord makes a fair point, but these are issues relating to whether there are judges from the United Kingdom serving in Hong Kong. This is under review continually. I do not have any more information on that, but if there is any more, I will write to the noble Lord.

[Hong Kong: Political Prisoners](#)

22 Feb 2022 | 819 c119

Asked by: Baroness Merron

My Lords, following up on previous answers from the Minister, given the level of interference in the Hong Kong judicial system, does he agree that the context in which there was thought to be a continuing role for British and Commonwealth judges has fundamentally shifted? Is it not now time for those judges to be withdrawn from the judicial system? Will the Minister work with Commonwealth partners to get this done?

Answered by: The Earl of Courtown

My Lords, I thank the noble Baroness for that question. As I said, our assessment of Hong Kong's judicial independence is increasingly finely balanced. It is therefore right that it is being kept under review. It is essential that both the Hong Kong judiciary and Hong Kong's legal institutions can operate independently and free from political interference. Whether to withdraw judges from Hong Kong is decided by the Supreme Court, in conjunction and consultation with Her Majesty's Government.

[Hong Kong: Political Prisoners](#)

22 Feb 2022 | 819 c118

Asked by: Lord Mackenzie of Framwellgate

My Lords, I recall that, before the transfer of sovereignty in 1997, judges and anti-corruption police officers were routinely seconded to Hong Kong to assist with the administration of justice under the then colonial constitution. Can the noble Earl say how many of the individuals concerned remained in post at the changeover, whether British judges still served the new Hong Kong Administration after the transfer of sovereignty and what the position is now?

Answered by: The Earl of Courtown

My Lords, in relation to judges in Hong Kong, I answered the question on the first supplementary, but we are aware that a number of UK nationals are members of the Hong Kong police, having joined prior to the handover of Hong Kong to China in 1997. The Government have no jurisdiction over this matter; the national security law poses real questions for the rule of law and the protection of fundamental rights and freedoms promised by China in the joint declaration.

Hong Kong: Political Prisoners

22 Feb 2022 | 819 c118

Asked by: Lord Thomas of Gresford

My Lords, I know that there have been recent discussions between the Lord Chancellor, the Foreign Secretary and British judges who continue to serve on the Court of Final Appeal. That fine court declared recently that these new laws under the national security law trump rights guaranteed by the Basic Law. What were those talks about and what was their result?

Answered by: The Earl of Courtown

My Lords, I was not privy to those conversations, but the noble Lord is quite right about the situation in Hong Kong relating to breaches of the joint declaration that have continued over time.

Hong Kong: Political Prisoners

22 Feb 2022 | 819 c118

Asked by: Lord Cormack

My Lords, is it not time for us to reconsider British judges giving a veneer of respectability to an appallingly repressive regime?

Answered by: The Earl of Courtown

The national security law poses real questions for the rule of law in Hong Kong and the protection of fundamental rights and freedoms promised by China in the joint declaration. Our assessment of Hong Kong's judicial independence is increasingly finely balanced. It is, therefore, right that it is kept under review.

National Security: Hong Kong

16 Feb 2022 | HL5868

Asked by: Lord Alton of Liverpool

To ask Her Majesty's Government what discussions they have had with Lord Sumption following his comments reported in The Times on 2 February that he would be willing to preside over a National Security Law case in Hong Kong.

Answering member: Lord Wolfson of Tredegar | Ministry of Justice

Her Majesty's Government has not had any discussions with Lord Sumption following his comments being reported in The Times on 2 February.

Hong Kong: Judges

09 Feb 2022 | 118597

Asked by: Catherine West

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs, what recent assessment she has made of effect of the use of British and Commonwealth judges in cases relating to the National Security Law in Hong Kong on the independence of the judiciary.

Answering member: Amanda Milling | Foreign, Commonwealth and Development Office

The National Security Law poses real questions for the rule of law in Hong Kong and the protection of fundamental rights and freedoms promised by China in the Joint Declaration.

Our assessment of Hong Kong's judicial independence is increasingly finely balanced; it is therefore right that it is kept under review. It is essential that both the Hong Kong judiciary and Hong Kong's legal institutions are able to operate independently and free from political interference.

Judges: Hong Kong Court of Final Appeal

08 Feb 2022 | 114754

Asked by: Sarah Champion

To ask the Secretary of State for Justice, how many cases UK judges served on for the Hong Kong Court of Final Appeal in (a) 2019, (b) 2020 and (c) 2021; and what proportion of those cases related to (i) criminal, (ii) civil and (iii) commercial offences.

Answering member: James Cartlidge | Ministry of Justice

The two serving Supreme Court judges who sit in the Hong Kong Court of Final Appeal heard cases as follows:

2019: Lord Reed heard two criminal cases in September.

2020: No serving UK Supreme Court judges heard any cases.

2021: Lord Reed heard two criminal cases (he sat remotely from 31 August to 3 September).

Lord Hodge heard two criminal cases (he sat in Hong Kong between 23 and 26 November 2021).

Hong Kong: Administration of Justice

25 Jan 2022 | 107490

Asked by: Andrew Rosindell

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs, what recent assessment she has made of potential state interference in the Hong Kong judicial system.

Answering member: Amanda Milling | Foreign, Commonwealth and Development Office

As the Foreign Secretary set out in the foreword to the most recent Six-Monthly report on Hong Kong, British judges have played an important role in supporting the independence of the judiciary in Hong Kong for many years. The UK Government hopes this can continue.

However, the National Security Law poses real questions for the rule of law in Hong Kong and the protection of fundamental rights and freedoms promised by China in the Joint Declaration.

Our assessment of Hong Kong's judicial independence is increasingly finely balanced; it is therefore right that it is kept under review. It is essential that both the Hong Kong judiciary and Hong Kong's legal institutions are able to operate independently and free from political interference.

Hong Kong: Judges

13 Jan 2022 | 100585

Asked by: Ms Nusrat Ghani

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs, in the context of the conviction of Hang-tung Chow in Hong Kong and with reference to the Six-monthly report on Hong Kong 1 January to 30 June

2021, published on 14 December 2021, if she will revise her assessment that British judges can continue to play a positive role in supporting this judicial independence.

Answering member: Amanda Milling | Foreign, Commonwealth and Development Office

Hong Kong authorities' decision to target leading pro-democracy figures for prosecution is unacceptable. Freedom of expression and the right to peaceful protest, which are protected in both the Joint Declaration and the Basic Law, are fundamental to Hong Kong's way of life.

The National Security Law poses real questions for the rule of law in Hong Kong and the protection of fundamental rights and freedoms promised by China in the Joint Declaration. Our assessment of Hong Kong's judicial independence is increasingly finely balanced. We will continue to follow developments in this area closely.

Judiciary: Hong Kong

27 Oct 2021 | HL3088

Asked by: Lord Alton of Liverpool

To ask Her Majesty's Government what plans they have (1) to institute a further review into the independence of the Hong Kong judiciary, and (2) to assess the viability of UK judges continuing to serve on the Hong Kong Court of Final Appeal.

Answering member: Lord Wolfson of Tredegar | Ministry of Justice

The National Security Law poses real questions for the rule of law in Hong Kong and the protection of rights and freedoms promised by China in the Joint Declaration. The UK Government remains committed to supporting the principles of the independence of the judiciary and the rule of law in Hong Kong. That is why the government and the serving UK judges who sit on the Hong Kong Court of Final Appeal continue to assess the situation closely.

In line with our most recent assessment, the agreement under which the UK judges have served in Hong Kong since 1997 continues to have our full support.

Hong Kong Courts: British Judges

22 Mar 2021 | 811 cc607-610

Asked by: Lord Truscott

To ask Her Majesty's Government what assessment they have made of role of British judges in courts in Hong Kong; and what plans they have to prevent judges from participating in those courts.

Answered by: Lord Ahmad of Wimbledon | Foreign, Commonwealth and Development Office

My Lords, British judges have played an important role in supporting the independence of Hong Kong’s judiciary for many years. We want and hope for this to continue. However, the national security law poses real questions for the rule of law in Hong Kong and the protection of fundamental rights and freedoms promised by China in the joint declaration. The UK judiciary is of course independent of government and it is for it to make an assessment of the issue. It is right that the Supreme Court continues to assess the situation in Hong Kong in discussion with Her Majesty’s Government.

Hong Kong Courts: British Judges

22 Mar 2021 | 811 cc609-610

Asked by: Lord Woolf

My Lords, I refer to my entries in the register and my former position as a non-permanent judge of Hong Kong’s Court of Final Appeal, and my engagements to establish, and then become, respectively, president and Chief Justice of the commercial courts in Qatar and Kazakhstan, both of which are modelled on our commercial court and have former senior British judges on the Bench. I also refer to the article by Lord Sumption in the Times and the article in the South China Morning Post. In view of the answers that he has already given, do the Minister and the Foreign Office appreciate that the reputation of justice and judges in this country is enhanced by judges performing the roles to which I referred? If our Government are seen to be interfering with the appointment of British judges who do this work, especially where, in Lord Sumption’s apt words,

“In reality they are demands that judges should participate in a political boycott designed to put pressure on the Chinese Government to change its position on democracy”,

then this will not continue.

Answered by: Lord Ahmad of Wimbledon | Foreign, Commonwealth and Development Office

My Lords, I agree with the noble and learned Lord and recognise the important insight and experience that he brings to this debate. Equally, as I have already indicated in my previous answers, the Government are very clear that the independence of judges operating within Hong Kong must be free of political interference. However, it is right that we continue to work with the Supreme Court on its determination of that position. We call upon the Hong Kong authorities to respect the principle of these two aspects, which is enshrined within basic Hong Kong law.

Hong Kong Courts: British Judges

22 Mar 2021 | 811 c609

Asked by: Lord Garnier

My Lords, does my noble friend agree that the rule of law and the permanent and non-permanent judges in Hong Kong deserve all the support we can give them, and that the British and Commonwealth judges should stay, unless the independence of the judiciary is compromised by, for example, its being asked to enforce laws that were no longer in accordance with the rule of law, or it is undermined altogether? As my noble friend is well aware, I have been critical of the PRC's activities in breach of the rule of law and human rights, but will he accept that the removal of the non-resident judiciary would only please Beijing and damage the rule of law?

Answered by: Lord Ahmad of Wimbledon | Foreign, Commonwealth and Development Office

I agree with my noble and learned friend, and other noble Lords who have spoken on this Question, that our judges, as well as those from other countries, play an important role in upholding the independence of the judiciary, which should continue to be free from any interference. As I have said, their role is enshrined in basic Hong Kong law and it is important that the Supreme Court makes the ultimate decision on the continuation of that role.

Hong Kong Courts: British Judges

22 Mar 2021 | 811 c609

Asked by: Lord Collins of Highbury

My Lords, I suppose the issue is whether the presence of British judges legitimises a political and legal system which is compromised as a consequence of the Chinese Government's changes to Hong Kong law. On 12 March, the spokesperson for the noble and learned Lord, Lord Reed, said that the Supreme Court had been

“in close contact with the British foreign secretary and lord chancellor on matters for some time, and is reviewing with them the operation of the agreement”.

What has changed since 12 March? Are we likely to hear from the Lord Chancellor and the Government about a change in the role of British judges in Hong Kong?

Answered by: Lord Ahmad of Wimbledon | Foreign, Commonwealth and Development Office

My Lords, I will not prejudge any announcement. It is important that we co-ordinate very closely with the Supreme Court. As the noble Lord will be aware,

the role of the judges in Hong Kong is very much enshrined in basic Hong Kong law, under Articles 19 and 85, which guarantee their independence and freedom from interference. Those are important criteria and I am sure that, as I have already said, the Supreme Court is considering its position on this.

Hong Kong Courts: British Judges

22 Mar 2021 | 811 c608

Asked by: Lord Anderson of Swansea

My Lords, in the face of China's serial breaches of the 1984 Sino-British joint declaration, we have honoured our obligations and not done China's work for it. Is there not now a case for us to remain on that high ground and respect the wish of the Hong Kong legal community for distinguished judges to continue their work in the Court of Final Appeal, upholding the rule of law, until such time as the Chinese make their task impossible?

Answered by: Lord Ahmad of Wimbledon | Foreign, Commonwealth and Development Office

My Lords, briefly put, I totally agree with the noble Lord. As I said in response to the noble Lord, Lord Pannick, our judges play an important role in Hong Kong and it is important that the final decision on them continuing in that role lies with the Supreme Court.

Hong Kong Courts: British Judges

22 Mar 2021 | 811 c608

Asked by: Lord Pannick

My Lords, I last appeared in the Court of Final Appeal in Hong Kong two weeks ago. It was a remote appearance. It was 2 am, but the court seemed to me to be as independent as it has been since 1997. Will the Minister recognise that the judges in Hong Kong are doing everything in their capacity to maintain their independence and that they and the independent Bar in Hong Kong are very keen that the judges of this jurisdiction continue to support them and do not abandon them?

Answered by: Lord Ahmad of Wimbledon | Foreign, Commonwealth and Development Office

My Lords, the noble Lord speaks with great insight on this matter, and I agree with him. That is why it is right that the Supreme Court makes a decision, but it is also right that it does so while consulting Her Majesty's Government. We pride ourselves on the strength of the independence of the judiciary. I hope that the authorities in Hong Kong do the same.

Hong Kong Courts: British Judges

22 Mar 2021 | 811 c607

Asked by: Lord Sharpe of Epsom

My Lords, I declare my interest as a vice-chairman of the All-Party Parliamentary Group on Hong Kong. I am sure that many will have read this morning's disturbing story in the Daily Telegraph that BNO passport holders who apply for UK visas may be at risk of having their pensions withheld. That perhaps illustrates the current regime's contempt for established law. What steps have the UK Government taken in response to this and any other recent developments in Hong Kong?

Answered by: Lord Ahmad of Wimbledon | Foreign, Commonwealth and Development Office

My noble friend is right to draw attention to this worrying development whereby the Mandatory Provident Fund Schemes Authority will no longer accept BNO passports. It is yet further evidence of the challenges which continue to be experienced in Hong Kong. The Government have acted by providing new immigration routes to BNO holders to the UK. We have suspended the extradition treaty with Hong Kong and put in place an arms embargo. We continue to call out, as we did on 13 March through my right honourable friend the Foreign Secretary, breaches of the joint declaration.

Hong Kong Courts: British Judges

22 Mar 2021 | 811 c607

Asked by: Lord Truscott

My Lords, I thank the Minister for his reply, but is it not time that Her Majesty's Government make their position clear on this and take further action? Is it not wrong on many levels that British judges are active in Hong Kong, giving a veneer of respectability to wholly draconian laws which effectively stifle freedom of speech, freedom of assembly and free and fair elections?

Answered by: Lord Ahmad of Wimbledon | Foreign, Commonwealth and Development Office

My Lords, let me assure the noble Lord that, as I said in my original Answer, we are working closely with the Supreme Court. The noble and learned Lord, Lord Reed, has already made it clear that he is co-ordinating his response in consultation with the Government. The important assessment to be made is in relation to the issue of judicial independence, as guaranteed by Hong Kong Basic Law, and the rule of law. This is under active consideration by the Supreme Court in consultation with the Government.

Legal Profession: Human Rights

02 Feb 2021 | 142866

Asked by: Shabana Mahmood

To ask the Secretary of State for Justice, when he expects the consultation with the President of the Supreme Court on the appropriateness of UK legal professionals sitting on proceedings in nations where human rights abuses have been noted to conclude; and whether the findings of that consultation will be published.

Answering member: Alex Chalk | Ministry of Justice

The UK Government are committed to ensuring that the UK judiciary and UK lawyers should maintain the highest reputation in upholding the rule of law wherever they may sit on proceedings.

For example, in relation to Hong Kong, UK judges have played an important role in supporting the independence of Hong Kong's judiciary for many years. We want this to, and hope that it can, continue. The UK judiciary is independent of the Government and it is therefore for them to make an assessment on this. The Lord Chancellor has, however, discussed with Lord Reed how they may jointly monitor developments to enable the Supreme Court to consider carefully the role of their sitting justices, and to assist other serving judges to determine the propriety of their continued service.

No formal consultation with the President of the UK Supreme Court is taking place.

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Other Parliamentary material

Amnesty International Offices in Hong Kong

15 Nov 2021 | 703 cc428-34

Alistair Carmichael

The hon. Gentleman will be aware that, as recently as Saturday, a judgment was handed down that dealt with the question of joint enterprise, which shows that the national security law is actually building a significant body of jurisprudence. In these circumstances, does he agree that it is now wholly inappropriate that United Kingdom lawyers and especially judges should be party to this sham of democracy?

[...]

Andrew Rosindell

[...]

Ministers must reconsider the participation of sitting UK judges on the Hong Kong Court of Final Appeal. As the human rights situation continues to deteriorate at a worrying pace, it is clear that these judges are powerless to moderate Beijing's behaviour. Instead, they are offering political cover for a Government in Hong Kong who have lost all legitimacy.

[...]

Vicky Ford | Foreign, Commonwealth and Development Office

[...]

My hon. Friend mentioned the participation of British judges in the Hong Kong Court of Final Appeal. British judges have played an important role in supporting the independence of Hong Kong's judiciary since handover, but it is for the judges to make their own decisions about their continued service in Hong Kong. It is right, however, that the UK Supreme Court, in discussion with our government, continues to assess the situation in Hong Kong.

[...]

Human Rights in Hong Kong

9 Jun 2021 | 696 cc399-401WH

Iain Duncan Smith

[...]

I question why British judges are still earning a living in Hong Kong. I believe it is no longer possible for them to argue that they are modifying or ameliorating the situation. All they are doing is giving, in a sense, a bit of succour to a brutal, intolerant and debased regime. The Bar Council here should speak to those who are earning a living in Hong Kong and say, "It is time to draw stumps and come home." I call on them to do that.

[...]

Hong Kong Courts: British Judges

22 Mar 2021 | 811 cc608-10

Lords oral questions on what assessment the government has made of the role of British judges in courts in Hong Kong; and what plans they have to prevent judges from participating in those courts

China: Labour Programme in Tibet

7 Oct 2020 | 681 cc119-120WH

Iain Duncan Smith

[...]

Then there is the situation in Hong Kong. How much more can we say about Hong Kong? China is abusing what is going on and has dismissed an international agreement with regards to the legalities, leading to the incarceration of many peaceful protestors and their shipment to China for prosecution, where they will certainly not get a fair trial. By the way, I asked the Government what they think of British judges being employed still on the bench in Hong Kong. Surely it is time that we said, “Enough!” They can no longer give cover to what is going on in Hong Kong. It has to stop, for goodness’ sake.

[...]

Hong Kong: Human Rights

4 Jun 2020 | 803 cc1503-20

[...]

Baroness Goudie

My Lords, I thank the noble Baroness, Lady Anelay, for this debate. Nothing is more fundamental to human rights in Hong Kong and elsewhere than an independent, impartial judiciary. Hong Kong has that; mainland China has not. An important feature of the judicial system in Hong Kong is that, since handover, its local Court of Final Appeal has replaced appeals to the Privy Council. This was authorised by the Hong Kong Basic Law in London. The judges in the Court of Final Appeal are mostly from Hong Kong, but very senior judges or retired judges are from the United Kingdom, Australia or Canada and do participate. A clear violation of human rights in Hong Kong would be interference by China in the composition of the Court of Final Appeal for cases or categories of case, or interference in the filling of vacancies. There is no doubt that the independence of the Hong Kong judiciary is under attack, and this is a grave danger for the rule of law in Hong Kong. Hong Kong judges have been threatened —

[...]

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Further reading

[The six-monthly report on Hong Kong: 1 January to 30 June 2021](#)

Foreign, Commonwealth and Development Office

DEP2021-0937

14 Dec 2021

[Hong Kong Court of Final Appeal](#)

Who's Who: The Judges: The Non-Permanent Judges

Updated: 29 Nov 2021

[Hong Kong: National Security Law and recent events](#), Commons Library

Briefing Paper, 20 September 2021

[Role of UK judges on the Hong Kong Court of Final Appeal - update](#)

The Supreme Court

A statement from Lord Reed, President of the Supreme Court, The Right Hon Lord Reed of Allermuir

27 Aug 2021

[Human rights in Hong Kong](#), Commons Library Briefing Paper, 7 June 2021

[All-Party Parliamentary Group on Hong Kong](#) (Membership)

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