

*Draft Order laid before Parliament under section 20(4) of the Human Rights Act 1998, for approval
by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2004 No. XXX

HUMAN RIGHTS

The Human Rights Act 1998 (Amendment) Order 2004

Made - - - - 2004

Coming into force in accordance with article 1

Whereas the United Kingdom ratified Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms⁽¹⁾, concerning the abolition of the death penalty in all circumstances, on 10th October 2003, and that Protocol⁽²⁾ came into force in relation to the United Kingdom on 1st February 2004;

And whereas a draft of this Order has been approved by each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 1(4) of the Human Rights Act 1998⁽³⁾, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Human Rights Act 1998 (Amendment) Order 2004, and shall come into force on the day after the date on which it is made.

Amendments to the Human Rights Act 1998

2.—(1) In section 1(1)(c) (the Convention rights) of the Human Rights Act 1998 (“the Act”), for “Articles 1 and 2 of the Sixth Protocol” substitute “Article 1 of the Thirteenth Protocol”.

(2) In section 21(1) (interpretation) of the Act omit the definition of “the Sixth Protocol” and insert after the definition of “the Eleventh Protocol”—

““the Thirteenth Protocol” means the protocol to the Convention (concerning the abolition of the death penalty in all circumstances) agreed at Vilnius on 3rd May 2002;”

(1) Commonly known as the European Convention on Human Rights.

(2) Cm 5795.

(3) 1998 c. 42. Section 1(4) was amended by article 8 of, and paragraph 7 of Schedule 2 to, the Transfer of Functions (Miscellaneous) Order 2001, S.I.2001/3500, to reflect the transfer of the relevant functions of the Secretary of State to the Lord Chancellor made by article 3 of, and paragraph 5 of Schedule 1 to, that Order. The Lord Chancellor’s functions under section 1 of the Human Rights Act were then transferred to the Secretary of State by article 4 of, and Schedule 1 to, the Secretary of State for Constitutional Affairs Order 2003, S.I. 2003/1887, and section 1 was amended by Schedule 2, paragraph 10 to that Order to refer to the Secretary of State, in place of the Lord Chancellor.

(3) For Part 3 of Schedule 1 to the Act, substitute—

“PART 3

ARTICLE 1 OF THE THIRTEENTH PROTOCOL

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.”

Dated 2004

Falconer of Thoroton, C

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made following the ratification by the United Kingdom of the Thirteenth Protocol to the European Convention on Human Rights (“the Convention”) on 10 October 2003. The Thirteenth Protocol abolishes the death penalty in all circumstances. It supersedes the Sixth Protocol to the Convention, which abolished the death penalty in most circumstances, but permitted States to make provision in their law for the death penalty in respect of acts committed in time of war or of imminent threat of war.

This Order amends the Human Rights Act 1998 by substituting Article 1 of the Thirteenth Protocol for Articles 1 and 2 of the Sixth Protocol in Part 3 of Schedule 1 to that Act, which gives Articles 1 and 2 of the Sixth Protocol the status of “Convention rights” protected by the Act. Article 1 of the Thirteenth Protocol is in identical terms to Article 1 of the Sixth Protocol, but omits the exception allowing the death penalty in time of war previously contained in Article 2 to the Sixth Protocol.

This Order also amends sections 1 of the Human Rights Act 1998 by substituting references to Article 1 of the Thirteenth Protocol for Articles 1 and 2 of the Sixth Protocol, and section 21 of that Act by omitting the definition of the Sixth Protocol and inserting a definition of the Thirteen Protocol.