

Draft Order laid before Parliament under paragraph 2(a) of Schedule 2 to the Human Rights Act 1998 (c. 42) for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

HUMAN RIGHTS

The Human Rights Act 1998 (Remedial) Order 2019

Made - - - - *******

Coming into force in accordance with article 1

It appears to the Secretary of State, following a finding of the European Court of Human Rights in proceedings against the United Kingdom⁽¹⁾, that section 9 of the Human Rights Act 1998⁽²⁾ is incompatible with an obligation of the United Kingdom arising from the Convention⁽³⁾.

The Secretary of State considers that there are compelling reasons for proceeding by way of a remedial order⁽⁴⁾ to make such amendments to section 9 of the Human Rights Act 1998 as the Secretary of State considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of that Schedule.

Accordingly, the Secretary of State makes the following Order, in exercise of the powers conferred by section 10(2) of, and paragraph 1(1)(a) and (b), (2) and (3) of Schedule 2 to, the Human Rights Act 1998.

Citation and commencement

- 1.—(1) This Order may be cited as the Human Rights Act 1998 (Remedial) Order 2019.
- (2) This Order comes into force on the day after the day on which it is made.

Amendment of the Human Rights Act 1998

- 2.—(1) In section 9 of the Human Rights Act 1998 (judicial acts), for subsection (3), substitute—

(1) *Hammerton v United Kingdom* (Application no. 6287/10), 17 March 2016.
(2) 1998 c. 42. Section 9(5) has been amended by section 10(6) of, and paragraph 39 of Schedule 4 to, the Justice (Northern Ireland) Act 2002 (c. 26).
(3) See section 21(1) of the Human Rights Act 1998 for the meaning of “the Convention”.
(4) See section 21(1) of the Human Rights Act 1998 for the definition of “remedial order”.

“(3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than—

- (a) to compensate a person to the extent required by Article 5(5) of the Convention, or
- (b) to compensate a person for a judicial act that is incompatible with Article 6 of the Convention in circumstances where the person is detained and, but for the incompatibility, the person would not have been detained or would not have been detained for so long.”.

(2) The amendment made by paragraph (1) applies in relation to judicial acts occurring before (as well as to those occurring after) this Order comes into force.

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Human Rights Act 1998 (“HRA”) to address a finding of the European Court of Human Rights of a breach of Article 13 of the European Convention on Human Rights (“Convention”) in the case of *Hammerton v United Kingdom* (Application no. 6287/10).

Article 2 of the Order amends section 9 HRA. Section 9(3) HRA provides that in proceedings under the HRA in respect of a judicial act done in good faith, damages may not be awarded, other than to compensate a person to the extent required by Article 5(5) of the Convention.

Article 2 of the Order enables damages to be awarded under the HRA in respect of a judicial act done in good faith where the judicial act is incompatible with Article 6, and the breach of Article 6 causes the person to be (i) detained when they would not otherwise have been, or (ii) subjected to a longer period of detention than had the breach not been committed.

Article 2 of the Order also provides that the amendments to section 9 HRA apply to judicial acts that occurred before, as well as after, the date on which this Order comes into force.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.