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

2026 No.

HUMAN RIGHTS

The Human Rights Act 1998 (Remedial) Order 2026

Made - - - - ***

Coming into force

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

The Secretary of State considers that there are compelling reasons for proceeding by way of a remedial order(**d**) 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)(b) and (3) of Schedule 2 to, the Human Rights Act 1998.

Citation, commencement and extent

1.—(1) This Order may be cited as the Human Rights Act 1998 (Remedial) Order 2026.

(2) This Order comes into force on the day after the day on which it is made.

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

Amendment of the Human Rights Act 1998

2.—(1) In section 9(3) of the Human Rights Act 1998 (damages for judicial acts)—

(a) omit the "or" at the end of paragraph (a), and

(**a**) *S.W. v United Kingdom* (Application no. 87/18), 22 June 2021.
(**b**) 1998 c. 42; section 9 was amended by section 10(6) of, and paragraph 39 of Schedule 4 to, the Justice (Northern Ireland) Act 2002 (c. 26) and S.I. 2020/1160.
(**c**) See section 21(1) of the Human Rights Act 1998 for the meaning of "the Convention".
(**d**) See section 21(1) of the Human Rights Act 1998 for the definition of "remedial order".

(b) at the end of paragraph (b) insert ", or

(c) to compensate a person for a judicial act that is incompatible with Article 8 of the Convention on the ground that the act was done in such a procedurally defective way as to amount to a breach of the requirements of procedural fairness under that Article.".

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

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 ("the 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 ("the Convention") in the case of S.W. v United Kingdom (Application no. 87/18).

Article 2 of the Order amends section 9(3) of the HRA. Section 9(3) provides that in proceedings under the HRA in respect of a judicial act done in good faith, damages may not be awarded other than in limited circumstances concerning incompatibility with Article 5 or Article 6 of the Convention.

Article 2 of the Order adds a further exception to the prohibition on the award of damages in section 9(3). It enables damages to be awarded where a judicial act is incompatible with Article 8 of the Convention on the ground that the act was done in such a procedurally defective way as to amount to a breach of the requirements of procedural fairness under that Article.

Article 2 of the Order also provides that the amendments to section 9(3) of the HRA apply to judicial acts that occurred before, as well as after, the date on which the 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

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