
STATUTORY INSTRUMENTS

1988 No. 793 (N.I. 4)

NORTHERN IRELAND

**Criminal Injuries (Compensation)
(Northern Ireland) Order 1988**

*Made - - - - 27th April 1988
Coming into operation on days to be appointed under
Article 1(2)*

At the Court of Saint James, the 27th day of April 1988

Present,

The Counsellors of State in Council

Whereas Her Majesty in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 28th day of March 1988, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required: And Whereas a draft of this Order has been approved by a resolution of each House of Parliament: Now, therefore, Her Majesty Queen Elizabeth, The Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the the said Letters Patent, and in pursuance of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974, and all other powers enabling Her Majesty, and by and with the advice of Her Majesty's Privy Council, do on Her Majesty's behalf order, and it is hereby ordered, as follows:—

Title and commencement

1.—(1) This Order may be cited as the Criminal Injuries (Compensation) (Northern Ireland) Order 1988.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“applicant” means a person who has made an application for compensation;

“compensation” means compensation under this Order;

“criminal injury” means an injury (including an injury which results in death) directly attributable to—

- (a) a violent offence;
- (b) the lawful arrest or attempted arrest of an offender or suspected offender, or the prevention or attempted prevention of an offence, or the giving of help to any constable, member of Her Majesty’s forces or prison officer who is engaged in arresting or attempting to arrest an offender or suspected offender or in preventing or attempting to prevent an offence;

“injury” includes any disease, any impairment of a person’s physical or mental condition and pregnancy;

“prescribed” means prescribed by regulations made by the Secretary of State;

“relative”, in respect of a victim, means—

- (a) the spouse or former spouse of the victim;
- (b) any person who—
 - (i) was living with the victim in the same household immediately before the date on which the criminal injury was sustained; and
 - (ii) had been living with the victim in the same household for at least 2 years before that date; and
 - (iii) was living during the whole of that period as the spouse of the victim;
- (c) any parent or other ascendant of the victim;
- (d) any person who was treated by the victim as his parent;
- (e) a child or other descendant of the victim;
- (f) any person (not being a child of the victim) who, in the case of any marriage to which the victim was at any time a party, was treated by the victim as a child of the family in relation to that marriage;
- (g) any person who is, or is the issue of, a brother, sister, uncle or aunt of the victim;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“terrorism” means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear;

“traffic offence” means an offence arising from the driving or use of a motor vehicle (within the meaning of the Road Traffic (Northern Ireland) Order 1981) unless the vehicle was, at the time of the commission of the offence, being primarily used for the purpose of—

- (a) causing injury; or
- (b) committing, or facilitating the commission of, a violent offence; or
- (c) avoiding arrest, or escaping detection, in connection with a violent offence;

“unlawful association” means any organisation which is engaged in terrorism and includes an organisation which at any relevant time is a proscribed organisation within the meaning of the Northern Ireland (Emergency Provisions) Act 1978;

“victim” means a person (including a unborn child) who has sustained a criminal injury in Northern Ireland;

“violent offence” means—

- (a) any offence which was intended to cause death, personal injury or damage to property;
- (b) any offence committed by causing the death or injury of any person, or damage to property, where the state of mind of the person committing the offence consisted of recklessness as to whether he caused death, personal injury or damage to property;
- (c) any offence under the Explosive Substances Act 1883;
- (d) any offence under the Firearms (Northern Ireland) Order 1981;
- (e) riot, rout or unlawful assembly;
- (f) kidnapping or false imprisonment;
- (g) rape; or
- (h) aiding, abetting, counselling, procuring or inciting the commission of, or attempting to commit, any offence mentioned in sub-paragraphs (a) to (g),

but does not include a traffic offence.

(3) For the purposes of this Order, an act shall be deemed to be a violent offence notwithstanding that the person performing it cannot be convicted of an offence arising out of the act because of his age or incapacity.

(4) In deducing any relationship for the purposes of this Order—

- (a) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and subject thereto,
- (b) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the stepchild of any person as his child; and
- (c) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

(5) In paragraph (4) “adopted” means adopted in pursuance of a court order made in any part of the United Kingdom, the Isle of Man or any of the Channel Islands or by a foreign adoption within the meaning of the Adoption (Hague Convention) Act (Northern Ireland) 1969.

(6) The reference to the former spouse of the victim in the definition of “relative” in paragraph (2) includes a reference to a person whose marriage to the victim has been annulled or declared void as well as a person whose marriage to the victim has been dissolved.

(7) For the purposes of this Order a person is under a disability while—

- (a) he is a minor; or
- (b) he is incapable, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, of managing and administering his property and affairs.

(8) A reference in this Order to the payment of compensation or any other sum to a person includes a reference to the payment of compensation or such sum for the benefit of that person.

Payment of compensation for criminal injuries

3.—(1) Subject to and in accordance with the provisions of this Order, where a person sustains a criminal injury in Northern Ireland after the coming into operation of this Order the Secretary of State shall, on application made to him, pay compensation.

(2) Where the victim of a criminal injury survives, compensation shall only be payable—

- (a) to the victim in respect of—

- (i) expenses actually and reasonably incurred as a result of his injury and any other expenses resulting directly from his injury which it is reasonable and proper to make good to him out of public funds;
- (ii) pecuniary loss to him as a result of total or partial incapacity for work;
- (iii) other pecuniary loss resulting from his injury;
- (iv) his pain and suffering and loss of amenities;
- (v) certain consequences of rape in accordance with Article 9;
- (b) to any person responsible for the maintenance of the victim in respect of—
 - (i) expenses actually and reasonably incurred as a result of the victim’s injury;
 - (ii) pecuniary loss resulting from the victim’s injury.
- (3) Where the victim of a criminal injury dies as a result of the injury, compensation shall only be payable—
 - (a) to the victim’s relatives in respect of—
 - (i) expenses actually and reasonably incurred as a result of the victim’s injury or death and any other expenses resulting directly from the victim’s injury or death which it is reasonable and proper to make good to his relatives out of public funds;
 - (ii) pecuniary loss resulting from the victim’s injury or death;
 - (b) to the spouse or parents of the victim in respect of bereavement;
 - (c) if the victim has no relatives, to any person who has incurred expenses as a result of the victim’s injury or death in respect of such expenses actually and reasonably incurred.
- (4) Where the victim of a criminal injury dies otherwise than as a result of the injury, compensation shall only be payable—
 - (a) to the victim’s relatives in respect of—
 - (i) expenses actually and reasonably incurred by the victim as a result of his injury;
 - (ii) pecuniary loss suffered by the victim as a result of his injury between the date of his injury and the date of his death;
 - (b) to any person who has incurred expenses as a result of the victim’s injury in respect of such expenses actually and reasonably incurred.

Applications for compensation

- 4.—(1) An application for compensation shall be made in such manner as may be prescribed.
- (2) An application for compensation may be made by any of the persons mentioned in Article 3(2) to (4) but so that—
 - (a) where the victim has died as a result of the criminal injury, the application may be made by the victim’s spouse on behalf of both the applicant and of such children, if any, as are relatives of the victim by virtue of sub-paragraph (e) or (f) of the definition of “relative” in Article 2(2);
 - (b) where there is no surviving spouse of a deceased victim or the victim or other person entitled to apply for compensation is under a disability, it may be made by such person as may be prescribed.
- (3) Where, by virtue of any assignment or act or event in the law, the right of any person to apply for or receive any compensation has passed to any other person, that other person, or, if he is under a disability, the person appearing to the Secretary of State to be entitled to act on his behalf, may be treated as an applicant for the purposes of any provision of this Order.

(4) Where an application for compensation is made to the Secretary of State in accordance with this Order he shall determine whether any compensation should be paid and, if so, its amount.

Exclusions from compensation

5.—(1) No compensation shall be paid unless, on a balance of probabilities, the victim sustained a criminal injury as a result of an act of another person.

(2) No compensation shall be paid in respect of an injury which is a criminal injury by virtue of sub-paragraph (a) of the definition of “criminal injury” in Article 2(2) where the victim was, at the time when the injury was sustained, living in the same household as the person or, if more than one, any of the persons responsible for causing it unless the Secretary of State is satisfied—

(a) in relation to the person responsible for causing the injury or, where more than one person is so responsible, in relation to each of the persons so responsible who, when the injury was sustained, was living in the same household as the victim—

(i) that he has been prosecuted in connection with the injury or that there is a sufficient reason why he has not been so prosecuted; and

(ii) that he and the victim have ceased to live in the same household and are unlikely to live in the same household again or that there are exceptional circumstances which prevent them from ceasing to live in the same household; and

(b) that no person who is responsible for causing the injury will benefit from the compensation if it is paid.

(3) No compensation shall be paid if the victim fails, without reasonable cause—

(a) to undergo any medical examination which he may be required by the Secretary of State to undergo; or

(b) to produce or cause or permit to be produced to the Secretary of State any medical records, X-rays or other documents relating to his injury or medical history which the Secretary of State may require to be produced; or

(c) to produce or cause or permit to be produced to the Secretary of State any medical report relating to his injury obtained by or on behalf of the victim in contemplation of or for the purpose of an application for compensation or civil proceedings.

(4) No compensation shall be paid unless the victim or, in the event of his death, one of his relatives, or, in either event, a representative of the victim or such a relative—

(a) makes forthwith to a constable or, within 48 hours from the commission of the criminal injury, to a constable at a police station in Northern Ireland, a report of the commission of the injury containing full and true disclosure of all facts, within his knowledge or belief, which might lead to the identification and apprehension of the offender or otherwise be material to the investigation of the matter by the police; and

(b) serves on the Secretary of State within 28 days from the commission of the criminal injury, a notice of intention to apply for compensation containing full and true disclosure of all facts, within his knowledge or belief, material to the determination of the application; or does so within such periods as the Secretary of State considers reasonable having regard to all the circumstances.

(5) No compensation shall be paid in respect of a criminal injury unless an application for compensation is made—

(a) within 3 months from the date on which a notice is served on the Secretary of State under paragraph (4)(b) in relation to the application unless there was reasonable cause for not making the application within that period; and

(b) within 3 years from the date on which the criminal injury was sustained.

(6) Where the victim was, at the time when the injury was sustained, under the age of 18 years, paragraph (5)(b) shall have effect with the addition at the end of the words “or, if there was reasonable cause for not making the application at any earlier time, within three years from the date on which the victim attains the age of 18 years”.

(7) Where the victim was, when the injury was sustained, an unborn child—

- (a) paragraph (4)(b) shall have effect with the substitution for the words from “28 days” to “injury” of the words “3 months from the date of birth of the child”;
- (b) paragraph (5)(a) shall have effect with the substitution for the words from “3 months” to “application” of the words “6 months from the date of birth of the child”;
- (c) paragraph (5)(b) shall have effect with the substitution for the words “on which the criminal injury was sustained” of the words “of birth of the child”.

(8) No compensation shall be paid unless the victim or, in the event of his death, one of his relatives, or, in either event, a representative of the victim or such a relative complies with all reasonable requests for information and assistance which might lead to the identification, apprehension, prosecution and conviction of the offender.

(9) Without prejudice to Article 6(1) or 9(6), no compensation shall be paid to, or in respect of a criminal injury to, any person—

- (a) who has been a member of an unlawful association at any time whatsoever, or is such a member; or
- (b) who has been engaged in the commission, preparation or instigation of acts of terrorism at any time whatsoever, or is so engaged.

(10) Subject to paragraph (11), no compensation shall be paid to any relative of the victim by virtue of Article 3(3)(a)(ii) in respect of any pecuniary loss resulting from the victim’s injury or death which consists of a loss of profits or other loss connected with any business in which the victim was engaged at the time when the criminal injury was sustained.

(11) Paragraph (10) does not apply if the relative was, at the time when the criminal injury was sustained, wholly or substantially dependent upon the victim’s income.

(12) No compensation shall be paid to any person by virtue of Article 3(2)(a)(iv) in respect of any injury which is caused by his mental reaction to the act arising out of which the application for compensation is made, or to the consequences of that act, unless—

- (a) the injury amounts to a serious and disabling mental disorder;
- (b) he sustained the injury by virtue of being present when that act was committed; and
- (c) the amount of compensation which, but for this sub-paragraph, would be payable by virtue of Article 3(2)(a)(iv) in respect of that injury is at least £1,000.

(13) No compensation shall be paid to any person if the amount of compensation which, but for this paragraph, would be payable is less than £400.

(14) Where the criminal injury is directly attributable to a sexual offence and, as a result of the offence, the victim gives birth to a child, no compensation shall be paid in respect of the maintenance of that child.

(15) No compensation shall be paid where the victim accidentally sustains an injury which is a criminal injury only by virtue of sub-paragraph (b) of the definition of “criminal injury” in Article 2(2) unless the Secretary of State is satisfied that the risk which the victim was taking when the injury was sustained was an exceptional risk for him to take.

Assessment of compensation

6.—(1) In determining whether any compensation should be paid and, if so, its amount, the Secretary of State shall have regard to all such circumstances as are relevant and, without prejudice to the generality of the foregoing, shall have regard to—

- (a) any provocative or negligent behaviour of the victim which contributed, directly or indirectly, to the criminal injury;
- (b) any criminal convictions which are indicative of the character and way of life of the victim and, where the applicant is a person other than the victim, of the character and way of life of the applicant.

(2) The Secretary of State, in determining the amount of compensation, shall deduct from the amount which, but for this paragraph, would be payable—

- (a) any sums paid to the victim or any of his relatives, by way of compensation or damages from the offender or any person on the offender's behalf, consequent on the criminal injury or on death resulting therefrom; and
- (b) any pension, gratuity or social security benefit which has been or will be paid to or for the benefit of the victim or any of his relatives consequent on the criminal injury or on death resulting therefrom.

(3) Any sum required to be deducted under paragraph (2) shall be deducted from the amount of any compensation in respect of pecuniary loss and the balance (if any) of that sum shall be deducted first from the amount of any compensation in respect of expenses and then from the amount of any other compensation.

(4) For the purposes of paragraph (2)(b)—

- (a) a pension or gratuity shall not be taken into account unless it has been or will be paid—
 - (i) by or on behalf of the Crown or the government of any country, state or territory outside the United Kingdom;
 - (ii) by or on behalf of the employer of the victim or by any person with whom the employer has made any contract or arrangement;
 - (iii) out of the resources of an occupational pension scheme, within the meaning of the Social Security Pensions (Northern Ireland) Order 1975 or of an appropriate personal pension scheme within the meaning of Article 3 of the Social Security (Northern Ireland) Order 1986; or
 - (iv) under the Parliamentary and other Pensions Act 1972, the Parliamentary and other Pensions Act 1987, the European Assembly (Pay and Pensions) Act 1979 or the Assembly Pensions (Northern Ireland) Order 1976 or in respect of the service of the victim as a member of any parliamentary or legislative assembly in any country, state or territory outside the United Kingdom;
- (b) social security benefit shall be deemed to be payable if it would be payable but for the wilful failure at any time of the victim to pay contributions which he was liable to pay; and
- (c) social security benefit is consequent on a criminal injury or on a death resulting from such an injury if, but for the criminal injury or that death, the benefit would not otherwise have been paid or be payable at the same time or to the same extent as it was or will be paid following the death or injury.

(5) In determining the amount of compensation payable to the widower or widow of a victim, his or her prospects of remarriage shall be disregarded.

(6) In determining the amount of compensation payable to a person who is a relative of the victim by virtue of sub-paragraph (b) of the definition of "relative" in Article 2(2), there shall be taken

into account the fact that that person had no enforceable right to financial support by the victim as a result of their living together.

(7) Any saving to a victim which is attributable to his maintenance wholly or partly at public expense in a hospital, nursing home or other institution for a period of time shall, subject to paragraph (8), be deducted from the amount which, but for this paragraph, would be payable in respect of the matter mentioned in Article 3(2)(a)(ii).

(8) Paragraph (7) does not apply to any saving in respect of—

- (a) a period of less than 8 weeks; or
- (b) the first 8 weeks of a period longer than 8 weeks.

(9) In this Article—

“the Crown” means the Crown in right of Her Majesty’s government in the United Kingdom or in Northern Ireland;

“employer” includes a former employer;

“gratuity” includes any payment of money whether made in consequence of a legally enforceable right or not;

“pension” includes any payment of a lump sum in respect of a person’s employment;

“social security benefit” means—

- (a) social security benefit payable under the laws of any part of the United Kingdom;
- (b) any similar benefit under the laws of any other country, state or territory.

(10) Nothing in this Article applies to—

- (a) compensation payable by virtue of Article 3(2)(a)(v); or
- (b) compensation for bereavement payable by virtue of Article 3(3)(b).

Earnings, etc. in relation to compensation

7.—(1) Where the victim of a criminal injury survives, the compensation payable in respect of the matter mentioned in Article 3(2)(a)(ii) shall be determined on the basis of a weekly rate which shall have regard to all relevant circumstances, and, in particular, to his actual earnings, if any, during the 6 months immediately preceding the date on which the criminal injury was sustained.

(2) Where the victim of a criminal injury dies, the compensation payable in respect of the matter mentioned in Article 3(3)(a)(ii) shall be determined—

- (a) having regard to the total annual income of the victim, both earned and unearned;
- (b) without regard to the Fatal Accidents (Northern Ireland) Order 1977 or to part III of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937; and
- (c) save as expressly provided by this Order, without reference to any loss or gain to his estate consequent on the injury.

(3) In calculating the compensation payable to the relatives of a victim who dies, he shall, until the contrary is proved, be taken to have spent one-fifth of his income on himself.

(4) In this Article “income” means the amount of a person’s income after taking account of—

- (a) income tax;
- (b) social security contributions payable under the laws of any part of the United Kingdom or similar contributions payable under the laws of any other country, state or territory;
- (c) in the case of an employed person, any amount deducted from his remuneration by his employer by way of superannuation contributions.

Limit on compensation for pecuniary loss

8.—(1) Subject to paragraph (2), compensation in respect of any pecuniary loss shall not (after applying Article 6(2)(b)) exceed 104 times the amount of average weekly industrial earnings multiplied by such factor as is appropriate having regard to the age of the victim and such other matters as are relevant.

(2) Paragraph (1) does not apply where the criminal injury was caused by a person acting on behalf of or in connection with an unlawful association.

(3) Where a senior police officer is of the opinion that any criminal injury was caused by a person acting on behalf of or in connection with an unlawful association he shall, if an applicant makes an application to him, issue to the applicant a certificate in the form set out in Schedule 1 or in such other form as may be prescribed.

(4) A certificate purporting to be issued by a senior police officer under paragraph (3) shall, until the contrary is proved, be evidence that the criminal injury referred to in the certificate was caused by a person acting on behalf of or in connection with an unlawful association.

(5) If a senior police officer certifies that it is in the public interest not to disclose the information on which any certificate issued under paragraph (3) is based that information shall not be disclosed in any court in proceedings under this Order.

(6) In this Article—

- (a) “average weekly industrial earnings” means the average gross weekly earnings for all full-time men aged 21 and over in all industries and services (excluding those whose pay was affected by absence) as set out in the Northern Ireland Abstract of Statistics prepared by the Department of Finance and Personnel and published from time to time by Her Majesty’s Stationery Office;
- (b) “senior police officer” means a member of the Royal Ulster Constabulary of the rank of assistant chief constable or above.

Compensation for certain consequences of rape and for bereavement

9.—(1) Compensation shall be payable by virtue of Article 3(2)(a)(v) only where—

- (a) the victim has sustained a criminal injury directly attributable to rape;
- (b) the victim has given birth to a child conceived as a result of the rape; and
- (c) the victim intends to keep the child.

(2) Subject to paragraph (6), the amount payable as compensation by virtue of Article 3(2)(a)(v) shall be £5,000.

(3) Where the victim of a criminal injury dies as a result of the injury, compensation for bereavement shall only be payable by virtue of Article 3(3)(b) to—

- (a) the spouse of the victim; or
- (b) where the victim was a minor who was never married—
 - (i) his parents, if he was legitimate; and
 - (ii) his mother, if he was illegitimate.

(4) Where compensation for bereavement is payable by virtue of Article 3(3)(b) to both the parents of the victim, the sum payable shall be divided equally between them.

(5) Subject to paragraph (6), the amount payable as compensation for bereavement by virtue of Article 3(3)(b) shall be £3,500.

(6) The Secretary of State may reduce the amount of compensation which, but for this paragraph, would be payable to any person by virtue of Article 3(2)(a)(v) or 3(3)(b) by such amount as appears to the Secretary of State to be appropriate having regard to—

- (a) any provocative or negligent behaviour of the victim which contributed, directly or indirectly, to the criminal injury; or
- (b) any criminal convictions which are indicative of the character and way of life of the victim and, in the case of compensation for bereavement, of the character and way of life of the applicant.

Discretionary payments

10.—(1) Where the aggregate of the compensation (if any) payable by virtue of Article 3(3)(a) (ii) to the spouse and child (if any) of a victim who has died as a result of a criminal injury is—

- (a) less than the discretionary payments limit because of a deduction made by virtue of Article 6(2)(b); or
- (b) less than the discretionary payments limit and a deduction is made by virtue of Article 6(2)(b), the Secretary of State may pay to the spouse or, if the spouse is dead, to the child such sum as when added to the compensation payable to the spouse and child equals—
 - (i) where sub-paragraph (a) applies, the discretionary payments limit; or
 - (ii) where sub-paragraph (b) applies, the amount of the compensation before any deduction by virtue of Article 6(2)(b).

(2) Where, but for Article 5(9), compensation would be payable to any person, the Secretary of State may, if he considers it to be in the public interest to do so, pay to him such sum as does not exceed the amount of that compensation.

(3) In paragraph (1) “the discretionary payments limit” means the aggregate of £10,000 (in respect of the spouse) and £1,300 (in respect of each child).

Effect of death on certain claims for compensation

11.—(1) Where the victim of a criminal injury dies otherwise than as a result of the injury—

- (a) any compensation or balance of compensation to which he was entitled immediately prior to his death shall cease to be payable; and
- (b) so much of Article 5(4)(b) and (5)(a) as requires a notice to be served or an application made within a specified time shall not apply to an application made by virtue of Article 3(4), but any such application shall be made within 3 months from the date of the victim’s death unless there was good cause for not making the application within that period.

(2) Where the victim of a criminal injury dies as a result of the injury, any compensation or balance of compensation to which he was entitled immediately prior to his death in respect of the matter mentioned in Article 3(2)(a)(iv) shall cease to be payable.

(3) Where a person dies, any compensation or balance of compensation to which he was entitled immediately prior to his death in respect of the matter mentioned in Article 3(3)(b) shall cease to be payable.

Notice of determination by Secretary of State

12.—(1) Where, in relation to any application for compensation, the Secretary of State determines that no compensation is payable, he shall serve notice of that determination on the applicant.

(2) Where, in relation to any application for compensation, the Secretary of State determines the amount of compensation payable to the applicant, he shall serve notice of that determination on the applicant in any case where—

- (a) the applicant, or any person to whom the compensation or any part of it is payable, is at the time of the determination under a disability; or
- (b) the applicant requests the Secretary of State in writing to do so; or
- (c) it appears to the Secretary of State to be appropriate to do so.

(3) A notice served under paragraph (1) or (2) shall inform the persons to whom it is addressed of the terms of Article 16(1).

(4) A notice under paragraph (2) shall specify the amount (if any) of compensation payable in respect of—

- (a) pecuniary loss;
- (b) expenses;
- (c) bereavement; and
- (d) other matters.

(5) Where after the service of a notice under paragraph (1) or (2) it appears to the Secretary of State that by reason of the application of Article 5(9), 6(1) or 9(6) the determination to which the notice relates should be cancelled or varied, he may, subject to paragraph (6), by further notice served on the applicant cancel or vary that determination.

(6) A cancellation or variation under paragraph (5) shall not have effect unless notice of it is served on the applicant—

- (a) within 10 weeks from the service of the notice under paragraph (1) or (2); and
- (b) before the applicant signs the discharge mentioned in Article 13(5) or lodges notice of an appeal under Article 16(1).

Ancillary provisions as to payments

13.—(1) The Secretary of State may, if he thinks fit, make one or more payments on account of the compensation payable but, subject to that, compensation shall be a lump sum.

(2) Where on an application under Article 4 the Secretary of State pays compensation to any person, the Secretary of State shall also pay to that person, in respect of the costs and expenses incurred by him in making out and verifying his claim to compensation, such sum as is reasonable having regard to the circumstances and references to compensation in paragraphs (1) and (3) and Articles 17 to 21 shall be construed as including references to any such sum.

(3) Compensation may be paid on such terms and conditions as the Secretary of State thinks fit as to the payment, disposal, allotment or apportionment of the compensation to the victim or his relatives, or any of them, or to any other person.

(4) The Secretary of State shall be deemed to be a government department for the purposes of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 as respects any compensation payable under this Order; and in the application of section 1 of that Act by virtue of this paragraph, the reference in subsection (1) of that section to the Department of Finance and Personnel shall be omitted.

(5) Where—

- (a) the Secretary of State determines the amount of compensation payable on an application under Article 4;
- (b) none of that compensation is payable to any person who at the date of the determination is a person under a disability; and

(c) the applicant notifies the Secretary of State that he and all other persons to whom that compensation or any part of it is payable wish to accept the amount of compensation so determined in full satisfaction of the claim for compensation, the applicant shall, as a condition of the payment of such compensation by the Secretary of State, sign a discharge in the prescribed form and, on such signing, the determination of the Secretary of State shall become in all respects final and binding.

Approval of awards to persons under a disability

14.—(1) Where—

- (a) the Secretary of State determines the amount of compensation payable on an application under Article 4; and
- (b) all or part of that compensation is payable to any person who at the date of the determination is a person under a disability,

none of that compensation shall be paid by the Secretary of State unless the determination is approved by the county court on an application made in accordance with county court rules by or on behalf of the person under disability or any other person to whom any of the compensation is payable.

(2) On an application under paragraph (1), the county court—

- (a) shall, if it is satisfied that the determination is in the interests of the person under a disability, approve the determination;
- (b) shall, if it is not so satisfied, make such an order as it could have made under Article 16 if there had been an appeal to it against that determination, and, in either case, may make such an order as to the apportionment, investment or payment of the compensation as appears to it to be just.

Delay by Secretary of State in determining compensation

15.—(1) Subject to paragraph (2), if, on an application made in accordance with county court rules by an applicant, a county court considers, having regard to all the circumstances—

- (a) that the Secretary of State has had sufficient information to enable him to determine the applicant's application for compensation; but
- (b) that the Secretary of State has not determined the application within such period after he received or obtained that information as is reasonable, the court may make a declaration to that effect.

(2) An applicant shall not make an application under paragraph (1) until—

- (a) after the expiration of 6 months beginning with the date of his application for compensation; and
- (b) after the expiration of one month beginning with the date of the service on the Secretary of State by him of a notice of his intention to make an application under this Article.

(3) The county court shall, before making a declaration under paragraph (1) afford to the Secretary of State an opportunity of being heard.

(4) Where—

- (a) a county court makes a declaration under paragraph (1); and
- (b) the Secretary of State does not, within 2 months after the date of that declaration, determine the application for compensation to which the declaration relates, the Secretary of State shall be deemed to have determined that no compensation is payable in pursuance of the application and to have served on the applicant a notice to that effect under Article 12(1).

Appeals to county court

16.—(1) Any person aggrieved by a determination of the Secretary of State notified to him under Article 12(1) or (2) may, within 10 weeks from the service of the notice, appeal to the county court in accordance with county court rules against the determination (unless it is under Article 10) but, unless he so appeals within that time, the determination shall become in all respects final and binding.

(2) Where the Secretary of State has varied a determination under Article 12(5), paragraph (1) shall apply as if the references to a determination were references to a determination as so varied and as if the reference to Article 12(1) or (2) were a reference to Article 12(5).

(3) Where an appeal under paragraph (1) relates to the amount of any compensation or costs to be paid by the Secretary of State under this Order, the Secretary of State shall have the like right to make a payment into the county court as a defendant has in an action in that court and—

- (a) where such a payment is made by the Secretary of State it shall, notwithstanding any provision to the contrary contained in section 22(c) of the Interpretation Act (Northern Ireland) 1954 or in any other statutory provision, have the like consequences as regards liability to pay the costs of the appeal as a payment made into court by a defendant has as regards liability to pay the costs of such an action;
- (b) the procedure and practice relating to payments made by the Secretary of State under this paragraph may be regulated by county court rules.

(4) At the hearing of any appeal under paragraph (1), the appellant shall not adduce evidence of any new matter unless—

- (a) the Secretary of State consents to that evidence being adduced; or
- (b) the applicant has, not less than 7 days before the day on which the appeal is heard, served on the Secretary of State a notice specifying that matter.

(5) In paragraph (4) “new matter” means any fact, information, report or other matter which would have been material to the determination of the appellant’s application for compensation by the Secretary of State but which, for whatever reason, was not available to the Secretary of State on the date on which he made the determination against which the appeal is brought.

(6) The county court may, on an application made to it on notice to the Secretary of State and in accordance with county court rules—

- (a) extend the time for making or serving any report or notice referred to in Article 5(4);
- (b) extend the time referred to in Article 5(5)(a) or 11(1) for making an application;
- (c) amend or otherwise deal with, in such manner and on such terms as the court thinks just, any such notice or application.

(7) Nothing in this Article or in any other statutory provision shall authorise the county court to extend—

- (a) the time referred to in Article 5(5)(b) for making an application; or
- (b) the time for bringing an appeal under this Article.

Recovery from offender

17.—(1) Where—

- (a) any person is convicted of a violent offence; and
- (b) compensation has been paid or is payable in respect of a criminal injury directly attributable to that offence, a county court may, on an application made to it by the Secretary of State, make an order directing the offender to reimburse to the Secretary of State the whole or any specified part of the amount of the compensation paid or payable.

(2) Any such order may be for the payment by the offender of a lump sum or of periodical payments during a specified period, or both, and, in any event, shall be enforceable in the same manner as a county court decree for a debt is enforceable.

(3) Before making an order under this Article, the court shall—

- (a) give the offender an opportunity to be heard; and
- (b) have regard to the financial position of the offender, his employment, the possibilities of his future employment, his liabilities to his family and otherwise and such other circumstances as the court considers relevant;

and may, for the purposes mentioned in sub-paragraph (b), obtain and consider a report from a probation officer.

(4) The court may at any time, on the application of the Secretary of State or of the offender, vary any order under this Article in such manner as it thinks fit.

(5) In considering an application under paragraph (4), the court shall have regard to—

- (a) any fresh evidence which has become available;
- (b) any change of circumstances which has occurred since the making of the order or, as the case may be, any previous variation of the order, or which is likely to occur; and
- (c) any other matter which the court considers relevant.

(6) Where the total amount reimbursed to the Secretary of State under this Article and under Article 18 in respect of any criminal injury exceeds the amount of compensation paid by him in respect of that injury, the Secretary of State shall repay the excess to the offender.

(7) In this Article and Article 18 “compensation” includes—

- (a) any costs awarded, on an appeal under Article 16, to any person other than the Secretary of State;
- (b) any expenses incurred by the Secretary of State in recovering, or attempting to recover, any compensation from the offender in pursuance of this Article.

Recovery from victim, etc.

18.—(1) Where—

- (a) compensation is paid to any victim or other person consequent on any criminal injury; and
- (b) there has been or is subsequently paid to the victim or that person, by way of compensation or damages from the offender or any person on the offender’s behalf, any sum which has not been deducted under Article 6(2)(a), the person receiving any such sum shall forthwith notify the Secretary of State and shall, subject to paragraph (2), forthwith reimburse to the Secretary of State—
 - (i) the amount of the compensation paid to the victim or that person, if that amount is equal to or less than that sum; or
 - (ii) that sum, if the amount of the compensation paid is greater.

(2) Where compensation is paid to any victim or other person consequent on a criminal injury and civil proceedings have been or are subsequently instituted in any court against the offender as a result of the injury and—

- (a) that court awards damages against the offender in favour of the victim or that other person, as the case may be; or
- (b) the parties agree to settle the proceedings in consideration of the payment by the offender to the victim or that other person of an agreed amount of damages;

that court may order the offender to pay the damages so awarded or agreed, or any part thereof, into court.

- (3) Where a court makes an order under paragraph (2)—
 - (a) it shall direct—
 - (i) the payment to the Secretary of State out of any money paid into court under its order of such amount or sum as would have been reimbursed to him under paragraph (1) if that money had been paid to the victim or other person; and
 - (ii) that the balance, if any, of the money paid into court under this Order shall be paid to the victim or the other person, as the case may be, or otherwise dealt with for the benefit of the victim or person as the court may, in the circumstances of the case, consider proper; and
 - (b) any amount or sum so paid to the Secretary of State by virtue of the direction of the court shall be deemed to have been paid to the Secretary of State under paragraph (1).
- (4) Where, on an application made to it by the Secretary of State, the county court is satisfied—
 - (a) that the Secretary of State has paid compensation to any person; but
 - (b) that that person failed to make full and true disclosure of all the facts material to the determination of the application,

the county court may make an order requiring that person to reimburse to the Secretary of State the compensation or such part of it as the court may specify.

- (5) Any sum required to be reimbursed under paragraph (1) or (4) and not so reimbursed—
 - (a) shall be recoverable as a debt due to the Secretary of State;
 - (b) may, without prejudice to the right of the Secretary of State to sue in the High Court or to any other remedy for the recovery thereof, and irrespective of the amount thereof, be recoverable by the Secretary of State in the county court by civil bill or summarily as a civil debt.
- (6) Any person who, being required by paragraph (1) to notify the Secretary of State of the receipt of any sum by way of compensation or damages, fails to do so without reasonable cause shall, without prejudice to his liability under that paragraph to reimburse any sum to the Secretary of State, be guilty of an offence and shall, on summary conviction, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.

Evidence

- 19.—(1) In any application or appeal under this Order—
 - (a) the fact that a person has been convicted of an offence by or before any court in the British Islands shall be admissible in evidence for the purpose of proving the acts, omissions or conduct on which the conviction was based, whether he was so convicted upon a plea of guilty or otherwise, but no conviction other than a subsisting conviction shall be admissible in evidence;
 - (b) in which a person is proved to have been convicted of an offence by or before any court in the British Islands—
 - (i) he shall be taken to have been guilty of the acts, omissions or conduct on which the conviction was based, except in so far as the contrary is proved; and
 - (ii) without prejudice to the reception of any other admissible evidence for the purpose of identifying the acts, omissions or conduct on which the conviction was based, the contents of any document which is admissible as evidence of the conviction shall be admissible in evidence for that purpose.

(2) In paragraph (1)—

“conduct” includes the state of mind or manner in which anything was done or omitted;

“conviction” includes, notwithstanding section 8 of the Probation Act (Northern Ireland) 1950, a conviction for an offence in respect of which an order is made under that Act placing the offender on probation or discharging him absolutely or conditionally;

“court” includes a court-martial;

“subsisting conviction” includes, where a conviction for an offence has been replaced on appeal by a conviction for another offence, the conviction for that other offence.

Offences

20.—(1) Any person who—

- (a) by any deception (as defined in section 15(4) of the Theft Act (Northern Ireland) 1969) obtains compensation or increased compensation for himself or for any other person; or
- (b) for the purposes of obtaining any compensation, knowingly, in or in connection with an application to the Secretary of State or otherwise, makes a false or misleading statement or a statement which he does not believe to be true or fails to disclose a material fact, shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or to both; or
- (b) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding one year, or to both.

Procedure, etc.

21.—(1) Where—

- (a) the Secretary of State receives notice of any assignment, or of any act or event in the law, affecting any compensation;
- (b) the person entitled to compensation or to whom any sum is payable under this Order is under a disability or is out of the United Kingdom; or
- (c) the Secretary of State is satisfied that the address of such a person cannot be ascertained without undue expense or delay, the Secretary of State may, in accordance with county court rules, pay the compensation or sum into such county court as appears to him to be appropriate.

(2) A payment into court under paragraph (1)—

- (a) shall to that extent be a sufficient discharge to the Secretary of State; and
- (b) shall, subject to any county court rules regarding money paid into court under section 63 of the Trustee Act (Northern Ireland) 1958, be dealt with in accordance with the orders of the court.

(3) Subject to Article 16(3) and to section 21A of the Crown Proceedings Act 1947, the county court may award costs to or against any party to or person appearing on any proceedings before it under this Order.

(4) Without prejudice to section 22 of the Crown Proceedings Act 1947, an appeal from any order made by a county court on or in connection with any proceedings under this Order (except an application under Article 15) shall lie at the instance of—

- (a) the Secretary of State; or

(b) any person who appeared or might have appeared on the hearing of those proceedings, as if the order had been made in exercise of the jurisdiction conferred by part III of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under part VI of that Order.

Payments into Consolidated Fund

22. Any sums received by the Secretary of State under this Order shall be paid into the Consolidated Fund of the United Kingdom.

Power to amend Order

23.—(1) The Secretary of State may by order substitute different amounts for those for the time being specified in Article 5(12) or (13), 9(2), 9(5) or 10(3).

(2) The Secretary of State may by order substitute a different number for that for the time being specified in Article 8(1).

(3) The Secretary of State may by order amend the definition of “average weekly industrial earnings” in Article 8(6) to such extent as appears to him to be necessary or expedient in view of any change in the headings or sub-divisions used in the Abstract of Statistics referred to in that Article.

Orders and regulations

24. Orders under Article 23 and regulations made by the Secretary of State under this Order shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

Claims for compensation under previous statutory provisions

25. Schedule 2 shall have effect in relation to claims for compensation under—

- (a) the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968; and
- (b) the Criminal Injuries (Compensation) (Northern Ireland) Order 1977.

Repeals

26. Subject to Schedule 2, the statutory provisions set out in Schedule 3 are hereby repealed to the extent specified in column 3 of that Schedule.

G. I. de Deney
Clerk of the Privy Council

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SCHEDULES

SCHEDULE 1

Article 8.

CERTIFICATE UNDER ARTICLE 8 OF THE CRIMINAL INJURIES (COMPENSATION) (NORTHERN IRELAND) ORDER 1988

CERTIFICATE UNDER ARTICLE 8 OF THE CRIMINAL INJURIES (COMPENSATION) (NORTHERN IRELAND) ORDER 1988

Application by

I hereby certify that the criminal injury specified below was, in my opinion, caused by a person acting on behalf of or in connection with an unlawful association within the meaning of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988.

[I further certify that it is not in the public interest to disclose the information on which this certificate is based.]

Signature

Rank

Date

Particulars of criminal injury

SCHEDULE 2

Article 25.

CLAIMS FOR COMPENSATION UNDER PREVIOUS STATUTORY PROVISIONS

Interpretation

1. In this Schedule—

“the 1968 Act” means the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968;

“the 1977 Order” means the Criminal Injuries (Compensation) (Northern Ireland) Order 1977.

Claims for compensation under the 1968 Act

2.—(1) The repeal by this Order of the 1977 Order does not affect the operation of Articles 3(4) and 8(2) of that Order in relation to the 1968 Act.

(2) No compensation shall be paid under the 1968 Act unless an application for compensation under that Act has been made before the coming into operation of this Order.

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(3) Nothing in any provision of the 1968 Act or in any other statutory provision shall authorise a county court to extend the time referred to in sub-paragraph (2) for making an application for compensation under that Act.

Claims for compensation under the 1977 Order

3.—(1) The repeal by this Order of the 1977 Order does not affect the operation of that Order in relation to any criminal injury sustained before the coming into operation of this Order.

(2) No compensation shall be paid under the 1977 Order in respect of a criminal injury unless an application for compensation under that Order—

- (a) has been made before the coming into operation of this Order; or
- (b) is made within the period of 3 years beginning with the date on which the criminal injury was sustained.

(3) Nothing in any provision of the 1977 Order or in any other statutory provision shall authorise a county court to extend the time referred to in sub-paragraph (2) for making an application under that Order.

(4) Article 8 of the 1977 Order shall have effect, and be deemed from 10th December 1981 to have had effect, as if for paragraph (5) there were substituted the following paragraph—

“(5) In this Article “the discretionary payments limit” means—

- (a) where the victim died as a result of a criminal injury sustained before 10th December 1981, the aggregate of £5,000 (in respect of the widow) and £500 (in respect of each child);
- (b) where the victim died as a result of a criminal injury sustained on or after 10th December 1981, the aggregate of £10,000 (in respect of the spouse) and £1,000 (in respect of each child).”.

SCHEDULE 3

Article 26.

REPEALS

| <i>Chapter or Number</i> | <i>Short Title</i> | <i>Extent of Repeal</i> |
|--------------------------|---|---|
| 1977 NI 15. | The Criminal Injuries (Compensation) (Northern Ireland) Order 1977. | The whole Order. |
| 1980 NI 3. | The County Courts (Northern Ireland) Order 1980. | In part II of Schedule 1 the amendment to the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. |
| 1981 NI 1. | The Road Traffic (Northern Ireland) Order 1981. | In Schedule 7, paragraph 20. |
| 1981 NI 2. | The Firearms (Northern Ireland) Order 1981. | In Schedule 4, paragraph 2. |
| 1982 NI 22. | The Criminal Injuries (Compensation) Amendment (Northern Ireland) Order 1982. | The whole Order. |

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order repeals and re-enacts with amendments the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The principal amendments are—

- (a) to introduce a bereavement award of £3,500 and an award of £5,000 to a woman who intends to keep a child conceived as a result of a rape;
- (b) to enable criminal convictions indicative of the conduct and way of life of the victim or applicant to be taken into account in the assessment of compensation;
- (c) to restrict the cases in which compensation is awarded for nervous shock;
- (d) to increase the minimum amount of a claim for compensation;
- (e) to increase the discretionary payments limit in respect of children;
- (f) to restrict the introduction of new matter in an appeal against a determination of compensation;
- (g) to introduce time limits for applications for compensation; and
- (h) to exclude from compensation certain injuries sustained accidentally in the course of arresting offenders or preventing offences.