

CRIME AND SECURITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Compensation of victims of overseas terrorism

Section 47: Introductory

218. [Section 47](#) confers power on the Secretary of State (in practice the Secretary of State for Justice) to make arrangements for payments to be made to, or in respect of, persons injured (including those fatally injured) as a result of a designated terrorist act (*subsection (1)*). The procedure governing the designation of an act is set out in *subsection (2)*. The Secretary of State (in practice the Secretary of State for Foreign and Commonwealth Affairs) may designate an act for the purpose of this section if: it took place outside the United Kingdom; it occurred on or after 18 January 2010 (the date proposals to establish such a scheme were announced (Official Report, House of Commons, col. 25-26)); in the view of the Secretary of State the act constituted terrorism (within the meaning of section 1 of the Terrorism Act 2000); and, having regard to all the circumstances, the Secretary of State considers that it would be appropriate to designate it. Those circumstances may include whether the Secretary of State has advised against travel to the country, or part of the country, where an attack occurred.

Section 48: Compensation scheme

219. [Section 48](#) provides that the arrangements that may be made by the Secretary of State under section 47 may include the making of a scheme – to be known as the Victims of Overseas Terrorism Compensation Scheme (*subsection (2)*). The Scheme may set out the circumstances in which payments may or may not be made and the categories of person to whom payments may be made (*subsection (1)*).
220. *Subsection (4)* introduces Schedule 2 to the Act which makes consequential amendments to other enactments.
221. [Paragraph 1](#) of Schedule 2 amends the Parliamentary Commissioner Act 1967 so as to bring the administration of the Victims of Overseas Terrorism Compensation Scheme within the remit of the Parliamentary Ombudsman.
222. [Paragraphs 2, 3 and 4](#) amend the Inheritance Tax Act 1984, the Income Tax (Trading and Other Income) Act 2005 and the Finance Act 2005 respectively to provide that the tax treatment of any awards under the Victims of Overseas Terrorism Compensation Scheme is in line with awards made under the Criminal Injuries Compensation Scheme.
223. [Paragraph 5](#) amends the Tribunals, Courts and Enforcement Act 2007 to provide that any decision of the First-tier Tribunal in respect of an appeal by an applicant against a review decision made under the Victims of Overseas Terrorism Compensation Scheme is not available for appeal to the Upper Tribunal (this mirrors the position in respect of appeals made under the Criminal Injuries Compensation Scheme). The decisions of the First-tier Tribunal are, however, subject to judicial review.

Section 49: Eligibility and applications

224. **Section 49** makes provision about the eligibility criteria to be included in the Scheme (*subsection (1)*). Eligibility to make an application may be determined by reference to the applicant's nationality (or that of the injured person, if different); by reference to the applicant's place of residence; by reference to the applicant's length of residence in that place; by reference to any other factor the Secretary of State considers appropriate; or by any combination of such factors. It is proposed that eligibility for compensation under the Victims of Overseas Terrorism Compensation Scheme should extend to British victims and nationals of the European Union and European Economic Area with a sufficient connection to the United Kingdom.
225. The Scheme may also require that an application must be made within a specified period (*subsection (2)(b)*) and in a specified manner or form (*subsection (2)(c)*).

Section 50: Payments

226. **Section 50** sets out the kind of provision that may be included in the Scheme for determining the amount of compensation payable to victims. Compensation payments may be calculated by reference to any one or more of the following factors (amongst other things): the nature of the injury (or injuries) sustained, loss of earnings or expenses incurred. This enables the adoption of a tariff-based approach, based on that set out in the Criminal Injuries Compensation Scheme.
227. *Subsection (2)* enables the Scheme to set out the circumstances in which compensation payments may be withheld or reduced. This would enable account to be taken of compensation payments available from other sources or payments arising from an insurance policy in respect of the same injury.
228. The Scheme may also make provision for compensation to be repayable in specified circumstances (*subsection (2)(b)*), for example, where subsequent to the payment of compensation under the Scheme, the victim receives compensation in respect of the same terrorist act from another source. Where a compensation payment which is due to be repaid in accordance with the Scheme is not repaid it may be recovered as a debt (*subsection (3)*).
229. The Scheme may provide for payments to be made subject to conditions (*subsection (2)(c)*); these might include a requirement that, in the case of a victim under 18 years, the compensation payments are held in trust until the victim reaches adulthood.
230. The Scheme may also provide that compensation payments do not exceed a specified maximum amount (*subsection (2)(d)*). The existing domestic Criminal Injuries Compensation Scheme allows for a maximum payment of £500,000.
231. *Subsections (5) and (6)* protect awards paid under the Scheme by ensuring that any legal charge or assignment attached to such awards is void and by preventing the monies passing to creditors following the bankruptcy of the recipient of an award.

Section 51: Claims officers etc

232. **Section 51** provides that the Scheme may include provision for applications to be determined and compensation payments made by claims officers appointed by the Secretary of State. Such claims officers will, in practice, be staff of the Criminal Injuries Compensation Authority. Although the Authority is part of the Ministry of Justice, decisions taken by claims officers for the purposes of the scheme are not to be regarded as being taken by, or on behalf of, the Secretary of State (see *subsection (3)*).

Section 52: Reviews and appeals

233. **Section 52** provides that the Scheme must include provision for the decisions taken by claims officers in accordance with the Scheme to be subject to review. Such reviews

will be conducted by a member of staff (that is, another claims officer) of the Criminal Injuries Compensation Authority who was not a party to the original decision under review (*subsection (2)*). *Subsection (3)* provides that the Scheme must also include provision for applicants to appeal decisions taken on review to the First-tier Tribunal. Such provision for reviews and appeals in the Criminal Injuries Compensation Scheme 2008 is contained in paragraphs 58 to 65 of that Scheme.

Section 53: Reports, accounts and financial records

234. **Section 53** makes provision for an annual report to be made with respect to the operation of the Scheme (*subsection (1)*). In practice, the Secretary of State will direct the chief executive of the Criminal Injuries Compensation Authority to make such a report. The annual report must be laid before Parliament (*subsection (2)*). This section also provides for the Secretary of State to nominate a person (again, in practice, the chief executive of the Criminal Injuries Compensation Authority) to keep proper financial records and produce an annual statement of accounts which will be subject to audit by the Comptroller and Auditor General (*subsections (3) to (5)*).

Section 54: Parliamentary control

235. **Section 54** makes provision for the Victims of Overseas Terrorism Compensation Scheme to be subject to Parliamentary scrutiny. The first such Scheme, and any wholly new Scheme made thereafter, will be subject to the affirmative resolution procedure (*subsections (1) and (2)*). The Parliamentary procedure applicable to any alterations to a Scheme will depend on the nature of the proposed changes to the Scheme. The affirmative resolution procedure will apply where the proposed alterations relate to the eligibility criteria for applicants, the determination of awards, the circumstances in which payments may be withheld or reduced, any maximum limit on the level of payments, and the review or appeals procedure (*subsections (3) and (4)*). In all other cases the negative resolution procedure will apply (*subsections (5) to (7)*). These provisions are analogous to those applicable to the Criminal Injuries Compensation Scheme under the Criminal Injuries Compensation Act 1995.