

EXPLANATORY MEMORANDUM TO
THE VICTIMS OF VIOLENT INTENTIONAL CRIME (ARRANGEMENTS FOR
COMPENSATION) (EUROPEAN COMMUNITIES) REGULATIONS 2005

2005 No. 3396

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

It contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These negative resolution regulations give effect to articles in European Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims which are intended to make it easier for victims to get compensation if they are injured by violent crime in an EU Member State other than the one where they normally live ('cross-border' cases).

- 2.2 A transposition note setting out how the Government will transpose into UK law the main elements of the Directive is annexed to this explanatory memorandum.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 These regulations do what is necessary to implement the articles in the Directive relating to 'cross-border' applications for compensation. No over-implementation has taken place during the transposition process.

EU Scrutiny History

- 3.2 The Directive, as originally drafted in 2002, would have required Member States to establish criminal injuries compensation schemes conforming to common minimum standards, and to facilitate cross-border access to compensation for victims injured in a Member State other than their normal one of residence. However, the final proposal (8255/04 of 7 April 2004) omitted the provisions about common minimum standards.

- 3.3 The resulting Directive accordingly aimed more simply to facilitate cross-border access to compensation and to require Member States to establish compensation arrangements that provided fair and appropriate compensation to victims of violent crime in their territory.

- 3.4 The Home Office submitted an Explanatory Memorandum on the final proposal on 21 April 2004. This was cleared by the Commons European Scrutiny Committee on 21 April 2004, and by the Lords Select Committee on the European Union on 22 April 2004 to which the Home Office provided further some explanation requested in a letter from Caroline Flint dated 24 May 2004.

3.5 The Directive was formally adopted on 1 May 2004.

4. Legislative Background

4.1 The Directive applies to the United Kingdom. There are separate criminal injuries compensation schemes in Great Britain and Northern Ireland. The Northern Ireland Scheme is modelled closely on the GB one.

4.2 The Criminal Injuries Compensation Scheme 2001 (“the 2001 Scheme”) is made by the Secretary of State under powers conferred on him by the Criminal Injuries Compensation Act 1995. It extends to Great Britain. The Northern Ireland Criminal Injuries Compensation Scheme 2002 (“the 2002 Scheme”) is made under powers conferred by the Criminal Injuries Compensation (Northern Ireland) Order 2002 (No.796). The 2001 Scheme provides for the Criminal Injuries Compensation Authority, claims officers of which deal with initial decisions and reviews of decisions on applications for compensation made under that Scheme. It also provides for the Criminal Injuries Compensation Appeals Panel, adjudicators of which deal with appeals against reviews of decisions under the 2001 Scheme. The 2002 Scheme provides for the Northern Ireland Compensation Agency and the Criminal Injuries Compensation Appeals Panel Northern Ireland which have equivalent roles in relation to the 2002 Scheme.

4.3 The powers available in the existing legislation are insufficient to give claims officers and adjudicators a power and a duty to deal with cross-border applications.

4.4 Accordingly, the Secretary of State was designated as a Minister who could exercise the power to make regulations conferred by section 2(2) of the European Communities Act 1972, by way of the European Communities (Designation) (No.2) Order 2005 (SI 2005 No. 1971) which specified that he could exercise those powers in relation to ‘Compensation to victims of violent intentional crime.’

4.5 These regulations are made under section 2(2) of the European Communities Act 1972.

5. Extent

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 Fiona Mactaggart, Parliamentary Under-Secretary of State, Home Office, has made the following statement regarding Human Rights:

“In my view the provisions of the Victims of Violent Intentional Crime (Arrangements for Compensation) (European Communities) Regulations 2005 are compatible with the Convention rights”

7. Policy background

7.1 The main thrust of the Directive as first drafted in 2002 was to require Member States to establish criminal injuries compensation schemes conforming to common minimum standards and to facilitate access to those schemes where victims were

injured in an EU country other than their one of normal residence. That proposal eventually foundered over the issue of the legal base for the common minimum standards part of the Directive.

7.2 The main thrust of the Directive as finally adopted is to require Member States to facilitate victims' access to compensation in cross-border situations. The Directive accordingly gives victims who are injured by violent intentional crime in a Member State other than their one of habitual residence the right to submit an application for compensation through their Member State of habitual residence to the state where the crime occurred. For their part, Member States are required to establish or designate bodies which can decide such claims (deciding authorities), and which can act as channels through which such claims can be transmitted between Member States (assisting authorities). The bodies must also provide a level of advice and support to victims in making such claims, and to their opposite numbers in other Member States in making arrangements for the applicant and other witnesses to communicate with them.

7.3 The Directive also requires Member States to establish compensation schemes which guarantee 'fair and appropriate compensation' to victims of violent intentional crime. This is necessary to ensure that victims injured in a Member State other than their one of residence can actually get such compensation from the State where the injury was sustained if they apply through the new cross-border arrangements. The Directive provides that compensation is payable by the Member State where the injury was sustained, not by the Member State of residence.

7.4 The United Kingdom has well established criminal injuries compensation schemes which fully meet the requirement to provide 'fair and appropriate compensation': thus no further action is needed to implement that requirement. The 2001 Scheme (Great Britain) and the 2002 Scheme (Northern Ireland) provide payment at public expense to any person (of any nationality or domicile) who has sustained criminal injury within Great Britain and Northern Ireland respectively. In both jurisdictions compensation is based on a tariff of awards for injuries of comparable severity. Compensation additional to the tariff award can be made in more serious cases for loss of earnings, loss of earning capacity and the costs of special care. Compensation is capped at £1/2m in an individual case for the GB Scheme. There is no upper cap on the NI Scheme.

7.5 These Regulations are therefore concerned with ensuring compliance with the other requirements of the Directive, namely those relating to cross-border applications.

7.6 The attached transposition note explains how the relevant articles of the Directive are implemented by these Regulations.

8. Impact

8.1 No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal. The Directive does not extend the range of people eligible to apply for compensation under the UK compensation schemes: it merely makes it easier for victims resident in other EU Member States to do so, since they can now submit their applications through a designated authority in

their state of residence rather than having to apply directly to a compensation authority in the UK. It also makes it easier for UK residents to make claims in relation to injuries suffered in other member states as they can make their applications through the UK compensation authority. The Directive should not therefore add to the costs of compensation paid by the UK schemes. There will be a marginal extra cost to the bodies which administer the schemes in establishing arrangements for facilitating cross-border applications. But such costs will be absorbed within existing budgets for administration.

9. Contact

Richard Thew at the Office for Criminal Justice Reform Tel: 020 7035 8431 or e-mail: richard.thew@cjs.gsi.gov.uk can answer any queries regarding these regulations.

Transposition Note for European Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

The Directive requires Member States to establish schemes for compensating victims of violent intentional crime, and to set up a system of cooperation between authorities in Member States to facilitate victims' access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence. Compensation will be determined in accordance with the compensation scheme of the Member State where the crime was committed and will be paid by an authority in that Member State.

These regulations do what is necessary to implement the Directive. The regulations do not implement the requirement to establish a scheme for compensating victims of violent intentional crime as such a scheme already exists. In relation to Great Britain, the relevant scheme is the Criminal Injuries Compensation Scheme 2001 (made under the Criminal Injuries Compensation Act 1995). In relation to Northern Ireland, the relevant scheme is the Northern Ireland Criminal Injuries Compensation Scheme 2002 (made under the Criminal Injuries Compensation (Northern Ireland) Order 2002).

Articles	Objectives	Implementation	Responsibility
1	Gives victims of violent intentional crime in a Member State other than their one of habitual residence the right to submit an application for compensation to an authority or body in their Member State of habitual residence	Regulation 6 of the Victims of Violent Intentional Crime (Arrangements for Compensation)(European Communities) Regulations 2005 ("the Regulations")	Secretary of State
2	Places responsibility for paying compensation on the (competent authority of the) Member State where the violent crime was committed	The Criminal Injuries Compensation Scheme (the 2001 Scheme) made under powers conferred by the Criminal Injuries Compensation Act 1995; and the Northern Ireland Criminal Injuries Compensation Scheme 2002 made under powers conferred by the Criminal Injuries Compensation (Northern Ireland) Order 2002	Secretary of State
3.1	Requires Member States to establish or designate one or more authorities ("assisting authorities") to accept applications for compensation submitted in accordance with Article 1	Regulation 3 of the Regulations places this responsibility on the Criminal Injuries Compensation Authority (CICA) (established under the Criminal Injuries	Secretary of State

		Compensation Scheme 2001).	
3.2	Requires Member States to establish or designate one or more authorities to be responsible for determining applications (“deciding authorities”) transmitted from assisting authorities in other EU Member States	Regulation 4(1) of the Regulations places this responsibility on CICA and the Criminal Injuries Compensation Appeals Panel (CICAP) in respect of injuries sustained in Great Britain; and Regulation 4(2) places the responsibility on the Northern Ireland Compensation Agency and Northern Ireland Appeals Panel (CICAPNI) in respect of injuries sustained in Northern Ireland	Secretary of State
3.3	Requires Member States to endeavour to keep to a minimum the administrative formalities required of applicants	No specific provision is required to implement this Article. If a person is seeking to make an application in respect of injuries sustained in any part of the United Kingdom, they will need to comply with the provisions of the relevant compensation scheme as regards making their application. The Department believes that the Criminal Injuries Compensation Scheme 2001 and the Northern Ireland Criminal Injuries Compensation Scheme 2002 do not impose onerous administrative formalities. In respect of CICA in its role of the assisting authority designated for the United Kingdom, there would appear to be no reason why many administrative formalities would be required of applicants.	Secretary of State and CICA, CICAP, the NI Compensation Agency and CICAPNI
4	Requires Member States to ensure that potential applicants have access to essential information on the opportunities for applying for compensation	Regulation 5 places this responsibility on CICA	Secretary of State

5.1	<p>Requires assisting authorities to provide the applicant with the application forms necessary to apply for compensation</p> <p>Requires assisting authorities to provide the application forms and the information under Article 4 on the basis of the manual drawn up in accordance with Article 13(2) of the Directive.</p>	<p>Regulation 7(a) places this responsibility on CICA</p> <p>Regulation 13(2) ensures that CICA will provide the forms and information on the basis of the manual</p>	Secretary of State
5.2	Requires assisting authorities to provide applicants, at their request, with general guidance on how to complete the application and what supporting documentation may be needed	Regulation 7(b) places this responsibility on CICA	Secretary of State
5.3	Makes it clear that assisting authorities have no responsibility for assessing the application	No provision is needed for this Article	
6.1	Requires the assisting authority to transmit the application and any supporting documentation to the deciding authority as quickly as possible	Regulation 8 of the Regulations places this responsibility on CICA	Secretary of State
6.2	Requires the assisting authority to transmit the application using the standard form referred to in Article 14	Regulation 8 of the Regulations places this responsibility on CICA	Secretary of State
7	Requires deciding authorities to send to assisting authorities and to the applicant an acknowledgement of the application, a point of contact and, if possible, an indication of when the claim might be determined	Regulation 9 of the Regulations places this responsibility on the UK deciding authorities (CICA, CICAP, the NI Compensation Agency and CICAPNI)	Secretary of State
8	Requires the assisting authority to provide, if necessary, general guidance to the applicant about meeting any request for supplementary information from the deciding authority and, at the applicant's	Regulation 10 of the Regulations places this responsibility on CICA (in respect of applicants who are habitually resident in the UK),	Secretary of State

	request, to send it to the deciding authority as quickly as possible enclosing, where appropriate, a list of any supporting documents transmitted		
9.1	Empowers deciding authorities to contact assisting authorities for the purpose of arranging for the applicant or any other person to be heard directly by the deciding authority in accordance the law in the deciding state through use of remote communications facilities, or to be heard by the assisting authority in accordance with the law of the assisting state and to transmit a report of the hearing to the deciding authority.	Regulation 11(1) of the Regulations empowers CICA to arrange for a person to be heard by the deciding authority directly by telephone or video conferencing facility if requested to do so. Regulation 11(2) empowers CICAP and CICAPNI to request such arrangements be made by assisting authorities in other Member States or to request the assisting authorities there to hear the person in accordance with the law of that authority's Member State. There is no provision in UK law for CICA to hold hearings (decisions are made on the papers alone), and hence no provision for them to do so at the request of other Member States. .	Secretary of State
9.2	Provides that a hearing in accordance with Article 9.1 may only take place in cooperation with the assisting authority and if the person to be heard agrees	Regulation 11(3) provides for this.	Secretary of State
10	Requires the deciding authority to send its decision on the application to the applicant and assisting authority as soon as possible, using a standard form (referred to in Article 14)	Regulation 12 places this responsibility on the UK deciding authorities	Secretary of State
11.1	Requires information transmitted between authorities, pursuant to Articles 6 – 10 to be expressed in (one of) the official language(s) of the Member State receiving the	Regulation 13(1) of the Regulations requires UK assisting and deciding authorities to transmit information in the language of the receiving authority or another Community	Secretary of State

	information or another Community language which that State has said it can accept; except for full texts of decisions of deciding authorities (which shall be in the language of the deciding authority).	language it has said it can accept.	
11.2	Precludes an assisting authority from recovering the costs of the services it provides from the applicant or the deciding authority	Regulation 13(3) of the Regulations precludes CICA from recovering its costs from an applicant or the relevant deciding authority	Secretary of State
11.3	Exempts application forms and any other supporting documentation sent by one authority to another from authentication or any equivalent formality	Regulation 13(4) of the Regulations confers this exemption	Secretary of State
12.2	Requires Member States to ensure that their national rules provide for the existence of a compensation scheme which guarantees fair and appropriate compensation to victims of violent intentional crime committed in their territory	The Criminal Injuries Compensation Act 1995 and the Criminal Injuries Compensation (Northern Ireland) Order 2002 provide for the existence of compensation schemes in Great Britain and Northern Ireland respectively. The compensation schemes made under those powers meet the requirements of the Directive	Secretary of State
13.1	Requires Member States to send the (European) Commission by 1.7.05 details of its assisting and deciding authorities	Done administratively. CICA, CICAP, the NI Compensation Agency and CICAPNI are the named authorities	Secretary of State
13.2	Requires Member States to inform the Commission by 1.7.05 of the languages, other than English, in which it will accept applications	Done administratively. Applications will be accepted in French and German	Secretary of State
18.1	Requires Member States to establish compensation arrangements by 1.7.05 and to bring into force arrangements to handle 'cross-border' applications by 1.1.2006.	The UK Criminal Injuries Compensation Schemes both long pre-date this Directive; and these Regulations will come into force on 1 st January 2006, ensuring compliance with the 'cross-border' requirements of the Directive.	Secretary of State