

*Draft Order laid before Parliament under Section 85(3) of the Northern Ireland Act 1998, for
approval by resolution of each House of Parliament*

DRAFT STATUTORY INSTRUMENTS

2002 No.

NORTHERN IRELAND

Criminal Injuries Compensation (Northern Ireland) Order 2002

*Made - - - - 2002
Coming into operation on days to be appointed under
Article 1(2)*

At the Court at , the day of 2002
Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by section 85 of the Northern Ireland Act 1998⁽¹⁾ and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I
INTRODUCTORY

Citation and commencement

1.—(1) This Order may be cited as the Criminal Injuries Compensation (Northern Ireland) Order 2002.

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

⁽¹⁾ 1998 c. 47.

Interpretation

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

(2) In this Order, unless the context otherwise requires—

“award” means an award of compensation made in accordance with the provisions of the Scheme;

“the Board” means the Commissioners of Inland Revenue;

“compensation” means compensation payable under an award;

“criminal injury”, “loss of earnings” and “special expenses” have such meaning as may be specified;

“income-based jobseeker’s allowance” and “joint-claim couple” have the same meaning as in the Jobseeker’s (Northern Ireland) Order 1995⁽³⁾;

“the Scheme” means the Northern Ireland Criminal Injuries Compensation Scheme;

“specified” means specified by the Scheme; and

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

(3) Any reference in this Order to the making of an award, or the payment of any sum, to a person includes a reference to the making of the award, or the payment of the sum, for the benefit of that person.

PART II

NORTHERN IRELAND CRIMINAL INJURIES COMPENSATION SCHEME

Compensation for criminal injuries

3.—(1) The Secretary of State shall make arrangements for the payment out of monies voted to him by Parliament of compensation to, or in respect of, persons who have sustained one or more criminal injuries in Northern Ireland.

(2) Any such arrangements shall include the making of a scheme providing, in particular, for—

(a) the circumstances in which awards may be made; and

(b) the categories of person to whom awards may be made.

(3) The scheme shall be known as the Northern Ireland Criminal Injuries Compensation Scheme.

(4) The Scheme may, in particular, include provision as to the circumstances in which an injury is to be treated for the purposes of the Scheme as having been sustained in Northern Ireland.

(5) The Scheme shall come into operation on such day or days as the Secretary of State may appoint.

(6) Where the Secretary of State appoints a day under paragraph (5) for the coming into operation of any provision of the Scheme, he may make such transitional provision as appears to him to be necessary or expedient in connection with the coming into operation of that provision.

(7) The Secretary of State shall lay before each House of Parliament a statement of any appointment made under paragraph (5) and any transitional provisions made under paragraph (6).

(2) 1954 c. 33 (N.I.)

(3) S.I. 1995 N.I. 15.

Basis on which compensation is to be calculated

4.—(1) The amount of compensation payable under an award shall be determined in accordance with the provisions of the Scheme.

(2) Provision shall be made for—

- (a) a standard amount of compensation, determined by reference to the nature of the injury;
- (b) in such cases as may be specified, an additional amount of compensation calculated with respect to loss of earnings;
- (c) in such cases as may be specified, an additional amount of compensation calculated with respect to special expenses; and
- (d) in cases of fatal injury to a person, a bereavement support payment to acknowledge the grief and sorrow caused by the death of that person and the loss of that person's care, guidance and society, and such additional amounts as may be specified or otherwise determined in accordance with the Scheme.

(3) Provision shall be made for the standard amount to be determined—

- (a) in accordance with a table ("the Tariff") prepared by the Secretary of State as part of the Scheme and such other provisions of the Scheme as may be relevant; or
- (b) where no such provision is made in the Tariff with respect to the injury in question, in accordance with such provisions of the Scheme as may be relevant.

(4) The Tariff shall show, in respect of each description of injury mentioned in the Tariff, the standard amount of compensation payable in respect of that description of injury.

(5) An injury may be described in the Tariff in such a way, including by reference to the nature of the injury, its severity or the circumstances in which it was sustained, as the Secretary of State considers appropriate.

(6) The Secretary of State may at any time alter any provision of the Scheme, and may in particular alter the Tariff—

- (a) by adding to the descriptions of injury mentioned there;
- (b) by removing a description of injury;
- (c) by increasing or reducing the amount shown as the standard amount of compensation payable in respect of a particular description of injury; or
- (d) in such other way as he considers appropriate.

(7) The Scheme may—

- (a) provide for amounts of compensation not to exceed such maximum amounts as may be specified;
- (b) include such transitional provision with respect to any alteration of its provisions relating to compensation as the Secretary of State considers appropriate.

Claims and awards

5.—(1) The Scheme shall include provision for claims for compensation to be determined and awards and payments of compensation to be made by the Secretary of State.

(2) The Scheme may, in particular, include provision—

- (a) as to the circumstances in which an award may be withheld or the amount of compensation reduced;
- (b) for an award to be made subject to conditions;
- (c) for the whole or any part of any compensation to be repayable in specified circumstances;

- (d) for compensation to be held subject to trusts, in such cases as may be determined in accordance with the Scheme;
 - (e) requiring claims under the Scheme to be made within such periods as may be specified by the Scheme; and
 - (f) imposing other time limits.
- (3) Where, in accordance with any provision of the Scheme, it falls to one person to satisfy another as to any matter, the standard of proof required shall be that applicable in civil proceedings.
- (4) Where, in accordance with any provision of the Scheme made by virtue of paragraph (2)(c), any amount falls to be repaid it shall be recoverable as a debt due to the Crown.
- (5) The Scheme may include provision requiring the Chief Constable to provide to a person making a claim under the Scheme a copy of any document relevant to that claim which he supplies to the Secretary of State, unless the Chief Constable would not be compelled to give that document in evidence or produce it in civil proceedings before the High Court.

Reviews

6. The Scheme shall include provision for the review, in such circumstances as may be specified, of any decision taken in respect of a claim for compensation.

Appeals

- 7.—(1) The Scheme shall include provision—
- (a) for rights of appeal against decisions taken on reviews under provisions of the Scheme made by virtue of Article 6; and
 - (b) for such appeals to be determined by persons (“adjudicators”) appointed for the purpose by the Secretary of State.
- (2) The Scheme may include provision—
- (a) for adjudicators to be appointed as members of a body having responsibility (in accordance with the provisions of the Scheme) for dealing with appeals;
 - (b) for the appointment by the Secretary of State of one of the members of that body to be its chairman;
 - (c) for the appointment of staff by the Secretary of State for the purpose of administering those provisions of the Scheme which relate to the appeal system.
- (3) Any person appointed under this Article by the Secretary of State—
- (a) shall be appointed on such terms and conditions as the Secretary of State considers appropriate; but
 - (b) shall not be regarded as having been appointed to exercise functions of the Secretary of State or to act on his behalf.
- (4) No decision taken by an adjudicator shall be regarded as having been taken by, or on behalf of, the Secretary of State.
- (5) The Scheme shall include provision as to the giving of advice by adjudicators to the Secretary of State.
- (6) The Secretary of State may at any time remove a person from office as an adjudicator if satisfied that—
- (a) he has been convicted of a criminal offence;
 - (b) he has become bankrupt or has made an arrangement with his creditors; or

(c) he is otherwise unable or unfit to perform his duties.

(7) The power conferred by Article 5(2)(a) to provide for the reduction of an amount of compensation includes power to provide for a reduction where, in the opinion of the adjudicator or adjudicators determining an appeal, the appeal is frivolous or vexatious.

Reports, accounts and financial records

8.—(1) As soon as possible after the end of each financial year, the Secretary of State shall make an annual report on the operation of the Scheme during that financial year.

(2) The Scheme shall include provision—

(a) for such person as the Secretary of State considers appropriate to make an annual report to him on the operation of those provisions of the Scheme which relate to the appeal system; and

(b) for the report—

(i) to be made as soon as possible after the end of each financial year; and

(ii) to cover the operation of those provisions during the year to which it relates.

(3) The Secretary of State shall lay before each House of Parliament a copy of every annual report made under paragraph (1) or (2).

(4) The Scheme shall also include provision—

(a) for such person as the Secretary of State considers appropriate—

(i) to keep proper accounts in connection with the administration of those provisions of the Scheme which relate to the appeal system;

(ii) to keep proper records in relation to the accounts;

(iii) to prepare a statement of accounts in each financial year in such form as the Secretary of State may direct;

(b) requiring such a statement of accounts to be submitted to the Secretary of State at such time as the Secretary of State may direct.

(5) Where such a statement of accounts is submitted to the Secretary of State, he shall send a copy of it to the Comptroller and Auditor General within one month of receiving it.

(6) The Comptroller and Auditor General shall—

(a) examine, certify and report on any statement of accounts sent to him under paragraph (5); and

(b) lay copies of the statement and of his report before each House of Parliament.

(7) In this Article “financial year” means the period beginning with the day on which this Article comes into operation and ending with the following 31st March and each successive period of 12 months.

Approval of the Scheme

9.—(1) Before making the Scheme, the Secretary of State shall lay a draft of it before Parliament.

(2) The Secretary of State shall not make the Scheme unless the draft has been approved by a resolution of each House.

Alterations to the Scheme

10.—(1) Before making any alteration to—

(a) the Tariff,

- (b) any provision of the Scheme as to the circumstances in which an injury is to be treated for the purposes of the Scheme as having been sustained in Northern Ireland,
- (c) any provision of the Scheme made by virtue of Article 4(2)(b) to (d) (additional amounts of compensation and bereavement support payments),
- (d) any provision of the Scheme as to the circumstances in which compensation may be payable with respect to a criminal injury of a kind for which no provision is made by the Tariff,
- (e) any provision of the Scheme as to the calculation of compensation in respect of multiple injuries,
- (f) any provision of the Scheme made by virtue of Article 4(7)(a) (limit on compensation),
- (g) any provision of the Scheme as to the circumstances in which an award may be withheld or compensation reduced,
- (h) any provision of the Scheme which gives a right of appeal, or
- (i) any provision of the Scheme which specifies the circumstances in which an appeal is to be dealt with by a hearing,

the Secretary of State shall lay before Parliament a draft of the provision as proposed to be altered.

(2) Where the Secretary of State is required to lay a draft before Parliament under paragraph (1), he shall not give effect to the proposal concerned unless the draft has been approved by a resolution of each House.

(3) Whenever any provision of the Scheme other than one mentioned in paragraph (1) is altered, the Secretary of State shall lay a statement of the altered provision before Parliament.

(4) If any statement laid before either House of Parliament under paragraph (3) is disapproved by a resolution of that House passed before the end of the period of 40 days beginning with the date on which the statement was laid, the Secretary of State shall—

- (a) make such alterations in the Scheme as appear to him to be required in the circumstances; and
- (b) before the end of the period of 40 days beginning with the date on which the resolution was made, lay a statement of those alterations before Parliament.

(5) In calculating any period mentioned in paragraph (4), any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days shall be disregarded.

PART III

MISCELLANEOUS

Advice, assistance and support for victims

11. The Secretary of State shall inform persons seeking compensation for criminal injuries sustained in Northern Ireland of any body designated by him for the purposes of this Article as a body providing advice, assistance and support to persons seeking compensation for such injuries.

Disclosure of information

12.—(1) The Secretary of State may supply the Department for Social Development with information about any award made to—

- (a) a person who is (either as an individual or as a member of a joint-claim couple) in receipt of income support or income-based jobseeker's allowance, or
 - (b) a person whose capital is treated, for the purposes of income support or income-based jobseeker's allowance, as the capital of a person or joint-claim couple in receipt of that benefit.
- (2) The Secretary of State may supply the Department of Finance and Personnel or the Northern Ireland Housing Executive with information about any award made to—
- (a) a person who is in receipt of housing benefit, or
 - (b) a person whose capital is, for the purposes of housing benefit, treated as the capital of a person in receipt of that benefit.
- (3) The Secretary of State may supply the Board or any officer of the Board with information about any award made to—
- (a) a person who is in receipt of working families' tax credit, or
 - (b) a person whose capital is, for the purposes of working families' tax credit, treated as the capital of a person in receipt of that tax credit.

Financial provisions

13.—(1) The Secretary of State may pay, or make such payments towards the provision of, such remuneration, pensions, allowances or gratuities to or in respect of adjudicators, as he considers appropriate.

(2) The Secretary of State may make such payments by way of compensation for loss of office to any adjudicator who is removed from office under Article 7(6), as he considers appropriate.

(3) The Secretary of State may pay such remuneration, allowances or gratuities to or in respect of persons appointed by him under Article 7 (other than adjudicators) as he considers appropriate.

(4) Any sums received by the Secretary of State under any provision of the Scheme made by virtue of Article 5(2)(c) shall be paid by him into the Consolidated Fund of the United Kingdom.

Recovery from offender

14.—(1) Where—

- (a) any person is convicted of a crime of violence; and
- (b) an award has been paid or is payable in respect of a criminal injury directly attributable to that crime,

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 of the amount of the award or such part of that amount as may be specified in the order.

(2) Any such order may be for the payment by the offender of a lump sum or of periodical payments during such period as may be specified in the order, 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 15 in respect of any criminal injury exceeds the amount of the award made in respect of that injury, the Secretary of State shall repay the excess to the offender.

(7) In this Article and Article 15 “award” includes 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.

15.—(1) Where an award is made to a person in respect of a criminal injury, and a relevant sum has been or is subsequently paid to that person in respect of that injury, or that person becomes entitled to a relevant sum in respect of that injury, that person shall forthwith notify the Secretary of State and shall, subject to paragraph (3), forthwith reimburse to the Secretary of State—

- (a) the amount of the award if that amount is equal to or less than the relevant sum, or
- (b) the relevant sum, if the amount of the award is greater.

(2) In this Article, a “relevant sum” means—

- (a) any criminal injury compensation award made under or pursuant to arrangements in force in Great Britain;
- (b) any compensation award or similar payment from the funds of any other country; or
- (c) any award where—
 - (i) a civil court has made an order for the payment of damages, or
 - (ii) a claim for damages or compensation has been settled on terms providing for the payment of money, or
 - (iii) payment of compensation has been ordered by a criminal court in respect of personal injuries.

(3) Where an award is made to a person in respect of 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 that person; or
- (b) the parties agree to settle the proceedings in consideration of the payment by the offender to that 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.

(4) Where a court makes an order under paragraph (3)—

- (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 person to whom the award was made; and

- (ii) that the balance, if any, of the money paid into court under its order shall be paid to that person or otherwise dealt with for the benefit of that 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).
- (5) 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.
- (6) Any sum required to be reimbursed under paragraph (1) or (5) 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.
- (7) Any person who, being required by paragraph (1) to notify the Secretary of State of the receipt of any relevant sum, 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.

Appeals from the county court

16. Without prejudice to section 22 of the Crown Proceedings Act 1947⁽⁴⁾, an appeal from any order made by a county court on or in connection with any proceedings under Article 14 or 15 shall lie at the instance of—

- (a) the Secretary of State; or
- (b) any person who appeared or who might have appeared on the hearing of those proceedings,

as if the order has been made in exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980⁽⁵⁾ and the appeal were brought under Part VI of that Order.

Offences

17.—(1) Any person who—

- (a) by any deception (as defined in section 15(4) of the Theft Act (Northern Ireland) 1969⁽⁶⁾) 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—

⁽⁴⁾ 1947 c. 44.

⁽⁵⁾ 1980 N.I. 3.

⁽⁶⁾ 1969 c. 16 (N.I.)

- (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.

Repeals and transitional provisions

18.—(1) The statutory provisions set out in the Schedule to this Order are hereby repealed to the extent specified in column 3 of that Schedule.

(2) The repeal by this Order of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988⁽⁷⁾ does not affect the operation of that Order in relation to any criminal injury sustained before the coming into operation of this Article.

(3) The Scheme and any Order under Article 1(2) may include such transitional provision as the Secretary of State considers appropriate in consequence of the coming into operation of this Order and the repeal of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988.

Clerk of the Privy Council

(7) 1988 N.I. 4.

SCHEDULE

Article 18(1)

REPEALS

Chapter or Number	Short title	Extent of repeal
1988 N.I. 4	Criminal Injuries (Compensation) (Northern Ireland) Order 1988.	The Whole Order.
1988 N.I. 16	Criminal Justice (Northern Ireland) Order 1991.	Article 5.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order repeals the Criminal Injuries (Compensation) (Northern Ireland) Order 1988. It replaces the arrangements under that Order for paying compensation for criminal injuries. The key features of the new arrangements are—

- (a) the introduction of a new statutory Scheme;
- (b) the establishment of a tariff of injuries to calculate the standard amount of compensation;
- (c) in certain cases payment for loss of earnings and special expenses;
- (d) the introduction of a new bereavement support payment;
- (e) provision for reviews of decisions;
- (f) the establishment of an independent Appeals Panel to hear appeals against decisions of the Secretary of State;
- (g) the introduction of funded support and assistance from a designated body to replace paid legal assistance.