
Changes to legislation: Criminal Justice and Immigration Act 2008, Cross Heading: Compensation for miscarriages of justice is up to date with all changes known to be in force on or before 29 March 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 25

AMENDMENTS TO ARMED FORCES LEGISLATION

PART 2

ARMED FORCES ACT 2006

Compensation for miscarriages of justice

- 29 (1) Section 276 (compensation for miscarriages of justice) is amended as follows.
- (2) In subsection (1) for “subsections (2) and (3)” substitute “ subsections (2) to (3A) ”.
- (3) At the end of subsection (3) insert “before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned.
- (3A) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.”
- (4) For subsection (6) substitute—
- “(6) Section 276A applies in relation to the assessment of the amount of the compensation.”
- (5) After subsection (7) insert—
- “(7A) But in a case where—
- (a) a person's conviction for an offence is quashed on an appeal out of time, and
- (b) the person is to be subject to a retrial,
- the conviction is not to be treated for the purposes of subsection (1) as “reversed” unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.”

Annotations:

Commencement Information

II Sch. 25 para. 29 in force at 31.10.2009 by S.I. 2009/1028, art. 2(b)

30 After section 276 insert—

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“276A Miscarriages of justice: amount of compensation

- (1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 276 for a miscarriage of justice.
- (2) In assessing so much of any compensation payable under section 276 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—
 - (a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction, and
 - (b) the conduct of the investigation and prosecution of the offence.
- (3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 276 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following—
 - (a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and
 - (b) any other convictions of the person and any punishment resulting from them.
- (4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 276 is to be a nominal amount only.
- (5) The total amount of compensation payable to or in respect of a person under section 276 for a particular miscarriage of justice must not exceed the overall compensation limit. That limit is—
 - (a) £1 million in a case to which section 276B applies, and
 - (b) £500,000 in any other case.
- (6) The total amount of compensation payable under section 276 for a person's loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.

 That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.
- (7) The Secretary of State may by order amend subsection (5) or (6) so as to alter any amount for the time being specified as the overall compensation limit or the earnings compensation limit.

276B Cases where person has been detained for at least 10 years

- (1) For the purposes of section 276A(5) this section applies to any case where the person concerned (“P”) has been in qualifying detention for a period (or total period) of at least 10 years by the time when—
 - (a) the conviction is reversed, or
 - (b) the pardon is given,

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as mentioned in section 276(1).

- (2) P was “in qualifying detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
- (a) by virtue of a sentence passed in respect of the relevant offence,
 - (b) under mental health legislation by reason of P's conviction of that offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
 - (c) as a result of P's having been ordered to be kept in service custody, or remanded for mental health purposes, in connection with the relevant offence or with any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (3) In calculating the period (or total period) during which P has been in qualifying detention as mentioned in subsection (1), no account is to be taken of any period of time during which P was both—
- (a) in qualifying detention, and
 - (b) in excluded concurrent detention.
- (4) P was “in excluded concurrent detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
- (a) during the term of a sentence passed in respect of an offence other than the relevant offence,
 - (b) under mental health legislation by reason of P's conviction of any such other offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
 - (c) as a result of P's having been ordered to be kept in service custody, or remanded for mental health purposes, in connection with an offence for which P was subsequently convicted other than—
 - (i) the relevant offence, or
 - (ii) any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (5) But P was not “in excluded concurrent detention” at any time by virtue of subsection (4)(a), (b) or (c) if P's conviction of the other offence mentioned in that provision was quashed on appeal, or a pardon was given in respect of it.
- (6) In this section—
- “kept in service custody” means—
 - (a) kept in service custody under section 105(2) of the Armed Forces Act 2006, or
 - (b) kept in military, air-force or naval custody under section 75A(2) of the Army Act 1955 or of the Air Force Act 1955 or section 47G(2) of the Naval Discipline Act 1957 (as the case may be);
 - “mental health legislation” means—
 - (a) Part 3 of the Mental Health Act 1983, or
 - (b) the provisions of any earlier enactment corresponding to Part 3 of that Act;

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“the relevant offence” means the offence in respect of which the conviction is quashed or the pardon is given (but see subsection (7));

“remanded for mental health purposes” means remanded or admitted to hospital under section 35, 36 or 38 of the Mental Health Act 1983 or under any corresponding provision of any earlier enactment;

“reversed” has the same meaning as in section 276 of this Act.

(7) If, as a result of the miscarriage of justice—

- (a) two or more convictions are reversed, or
- (b) a pardon is given in respect of two or more offences,

“the relevant offence” means any of the offences concerned.”

Annotations:

Commencement Information

I2 [Sch. 25 para. 30](#) in force at 31.10.2009 by [S.I. 2009/1028](#), [art. 2\(b\)](#)

31 In section 373 (orders, regulations etc.) in subsection (3)(a), after “113,” insert “276A(7),”.

Annotations:

Commencement Information

I3 [Sch. 25 para. 31](#) in force at 31.10.2009 by [S.I. 2009/1028](#), [art. 2\(b\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 7 para. 5A and cross-heading inserted by [2008 c. 25 Sch. 1 para. 90\(3\)](#)