
STATUTORY INSTRUMENTS

2020 No. 103

The Victims' Payments Regulations 2020

PART 3

Entitlement to victims' payments

Entitlement to victims' payments

5.—(1) A person is entitled to victims' payments in respect of injury caused by a Troubles-related incident if—

- (a) the injury results in permanent disablement;
- (b) the assessed degree of relevant disablement amounts to not less than 14 percent;
- (c) the Troubles-related incident took place—
 - (i) in the United Kingdom, or
 - (ii) anywhere in Europe, at a time when the applicant—
 - (aa) was a British Citizen;
 - (bb) was a person born in Northern Ireland and having, at the time of their birth, at least one parent who is a British Citizen, an Irish Citizen or is otherwise entitled to reside in Northern Ireland without any restriction on the period of residence;
 - (cc) was outside the United Kingdom in service of the Crown, or
 - (dd) was an accompanying close relative of a person serving outside the United Kingdom in service of the Crown;
- (d) the Troubles-related incident took place on or after 1 January 1966 but before 12 April 2010, and
- (e) an application has been made in accordance with regulation 8.

(2) But this entitlement is subject to regulation 6.

(3) Paragraph (1)(a) does not apply to a person during an interim period specified under regulation 14(c)(i).

(4) For the purpose of paragraph (1)(c)(ii)(dd)—

- (a) a person is the close relative of someone in service of the Crown if the person is—
 - (i) the spouse, civil partner or cohabiting partner of the person in service of the Crown;
 - (ii) a child under the age of 18 of the person in service of the Crown or of a person to whom sub-paragraph (i) applies;
 - (iii) a child of the person in service of the Crown who is dependent on that person as a result of disablement;
- (b) a person was an accompanying close relative of a person in service of the Crown if they were a close relative and living with that person in the same household.

(5) Paragraph (1)(d) does not apply in any case where a panel considers that the application of that paragraph would undermine the purposes of this Scheme.

(6) For the purpose of paragraph (5), the purposes of this Scheme are to—

- (a) acknowledge the harm suffered by those injured in the Troubles, and
- (b) promote reconciliation between people in connection with Northern Ireland's troubled past.

Convictions

6.—(1) A person is not entitled to victims' payments in relation to a particular Troubles-related incident where the person—

- (a) has a conviction (whether spent or not), and
- (b) that conviction was in respect of conduct which caused, wholly or in part, that incident.

(2) A person is not entitled to victims' payments where the Board considers that the person's relevant conviction makes entitlement to victims' payments inappropriate.

(3) A person is not entitled to victims' payments where the President of the Board considers that the exceptional circumstances of the case, having regard to material evidence, make entitlement to victims' payments inappropriate.

(4) The Secretary of State may issue guidance to the Board regarding the circumstances in which a relevant conviction or exceptional circumstances makes entitlement to victims' payments inappropriate.

(5) The Board and the President must have regard to any guidance issued under paragraph (4) when taking a decision under paragraph (2) or (3).

(6) In this regulation, a person has a relevant conviction if, in respect of that conviction, they received a sentence which is—

- (a) excluded from rehabilitation under the Rehabilitation of Offenders Act 1974⁽¹⁾ as it applies in England and Wales;
- (b) an excluded sentence under the Rehabilitation of Offenders Act 1974 as it applies in Scotland, or
- (c) excluded from rehabilitation under the Rehabilitation of Offenders (Northern Ireland) Order 1978⁽²⁾.

(7) Until section 17 of the Management of Offenders (Scotland) Act 2019⁽³⁾ is in force, the reference in paragraph (6)(b) to an excluded sentence is to be read as a reference to a sentence which is excluded from rehabilitation.

Causation of injury

7.—(1) For the purpose of these Regulations, a person's injury may only be considered to be caused by a Troubles-related incident if it is suffered by that person when—

- (a) present at a Troubles-related incident;
- (b) present in the immediate aftermath of a Troubles-related incident in which a loved one died or suffered an injury;
- (c) responding, in the course of employment, to a Troubles-related incident, in which the person reasonably believed a loved one had died or suffered significant injury.

(1) 1974 c. 53.

(2) S.I. 1978/1908 (N.I. 27).

(3) 2019 asp 14.

(2) In this regulation—

“employment” includes service of the Crown;

“immediate aftermath” includes any time when a loved one is in the same condition as they would have been at the scene of the Troubles-related incident;

“loved one” means another person with whom a person has a close relationship of love and affection, and such a relationship will be presumed to exist between—

(a) two people who are married to each other, or are civil partners, or live together as husband and wife or as if they were civil partners, and

(b) a parent and child;

“responding to a relevant incident” includes preventing, mitigating, or otherwise addressing the incident.

Making of applications

8.—(1) An application for victims’ payments must—

(a) be made to the Board;

(b) be in writing;

(c) be on a form approved for that purpose by the Board,

(d) include such information as the President of the Board may from time to time determine;

(e) be signed by or on behalf of the applicant.

(2) Subject to paragraph (3), applications may only be made during the period—

(a) beginning with the date advertised in the Belfast Gazette as the first date on which applications may be made, and

(b) ending on the fifth anniversary of the date so advertised, or such later date as the Secretary of State may determine.

(3) Applications may be made outside of the period mentioned in paragraph (2)—

(a) where there has been a material change of circumstance, or

(b) where the President considers that, having regard to the exceptional circumstances of the case, it is equitable to allow an application to be made.

(4) For the purpose of paragraph (3) there has been a material change of circumstances where, in particular—

(a) significant evidence relevant to the application has come to light, or

(b) the applicant reasonably considered that they were not entitled to victims’ payments pursuant to regulation 6 but the applicant no longer has a conviction to which regulation 6(1)(b) applies or a relevant conviction.

(5) In this regulation “relevant conviction” has the same meaning as in regulation 6.

Transfer of entitlement on death

9.—(1) On the death of a person entitled to victims’ payments, a nominated person is entitled to such payments for the period of 10 years beginning with the date of death.

(2) A person entitled to victims’ payments (“a beneficiary”) may nominate one person for the purpose of this regulation.

(3) A person may be nominated for the purpose of this regulation by a beneficiary if the person—

(a) is the spouse, civil partner or cohabiting partner of the person so entitled, or

- (b) is, or used to be, regularly and substantially engaged in caring for the beneficiary.
- (4) For the purpose of these Regulations, a person is to be treated as regularly and substantially engaged in caring for a beneficiary if—
 - (a) the person satisfies the conditions for entitlement to a carer's allowance or would do so but for the fact that their earnings have exceeded the limit prescribed for the purposes of that allowance, or
 - (b) a panel appointed for this purpose by the President of the Board considers it is equitable, in all the circumstances, to treat the person as having regularly and substantially engaged in caring for the beneficiary.
- (5) But a person is not to be treated as regularly and substantially engaged in caring for a beneficiary if the person derives earned income from those caring responsibilities.
- (6) Paragraph (4)(a) applies whether or not the person has made a claim for a carer's allowance.
- (7) In this regulation, "carer's allowance" means a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992⁽⁴⁾ or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁵⁾.

Posthumous applications

- 10.**—(1) This regulation applies on the death of a person ("the deceased") who would have been, before death, entitled to victims' payments if an application had been made in accordance with regulation 8.
- (2) An application for victims' payments may be made in accordance with regulation 8(1) by a person who the deceased could (following the determination of entitlement) have nominated under regulation 9(2).
- (3) On receipt of an application made by a person pursuant to paragraph (2), the Board must so far as reasonably practicable—
 - (a) consider whether any other person may make an application pursuant to paragraph (2), and
 - (b) notify in writing any such person of their right to make an application.
- (4) Where there is more than one person who has—
 - (a) made an application pursuant to paragraph (2), or
 - (b) notified the Board of an intention to make an application pursuant to that paragraph,
 a panel appointed for this purpose by the President of the Board must determine which application may proceed.
- (5) The panel must so far as possible make a determination under paragraph (4) by deciding who the panel reasonably considers the deceased would have nominated had the deceased made an application for victims' payments.
- (6) In making a determination under paragraph (4), the panel must have regard to any will made by the deceased.
- (7) Where the panel is unable to decide who the deceased would have nominated—
 - (a) in a case where a person who was the deceased's spouse, civil partner or cohabiting partner seeks to make an application, the panel must determine that application may proceed unless the Board considers it would be inequitable to do so, and

(4) 1992 c. 4; amended by S.I. 2002/1457, 2011/2426, 2013/388, 2015/1754.

(5) 1992 c. 7; relevant amending instruments are: S.R. 1994 No. 370, S.R. 2002 No. 321, S.R. 2011 No. 356, S.R. 2016 No. 228.

- (b) in any other case, or where the Board considers it inequitable for an application to proceed under sub-paragraph (a), the panel must determine which application is, in the interests of fairness, to proceed.
- (8) Paragraph (7)(a) does not apply in the case of a spouse or civil partner who was estranged from the deceased.
- (9) After making a determination under paragraph (4)(, the Board must as soon as reasonably practicable notify in writing the persons referred to in paragraph (4) of—
 - (a) the determination and the reason for it, and
 - (b) the right to appeal.
- (10) Where this regulation applies, a person entitled to victims' payments is entitled to such payments—
 - (a) in a case where the deceased died on or before 23rd December 2014, for the period beginning with the 23rd December 2014 and ending 10 years after the date of death of the deceased, or
 - (b) in any other case, for the period of 10 years beginning with the date of death of the deceased.