

EXPLANATORY MEMORANDUM TO
THE VICTIMS' PAYMENTS REGULATIONS 2020

2020 No. 103

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument establishes a Scheme for payments to be made to those permanently disabled as a consequence of injury caused by a Troubles-related incident. The instrument makes provisions for who will be entitled to payments and for how much, for decisions and appeals, and creates a new body to operate the Scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The provision regarding extent in the enabling power is perhaps slightly unusual. The extent of section 10 of the Northern Ireland (Executive Formation etc) Act 2019 (“the EF Act”) extends to the whole of the UK. However, section 10 (1) provides that the scheme is to be established under the law of Northern Ireland, effectively limiting the extent of regulations for the purpose of establishing that Scheme. However, regulations under section 10 may, courtesy of section 10(9) and 11(2), be used to amend provision made by an Act of Parliament, an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 This territorial extent of this instrument is the whole of the United Kingdom, in part. Regulations 1, 2, 26, 28, 29 and 31 apply to the whole of the United Kingdom. The majority of the amending provisions in the Instrument have the same extent as the provision being amended, save that the amendment made by Regulations paragraph 2 of Schedule 3 extends only to England and Wales. The remaining regulations apply to Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The EF Act extended the period for forming a Northern Ireland Executive and included measures to protect public services and ensure effective governance by the Northern Ireland Civil Service in the meantime. The Act also imposed on the UK Government the duty to legislate, through regulations, in three devolved areas, with the duties coming into force only in the event that an Executive was not formed on or before 21 October 2019.

7. Policy background

Political context

- 7.1 As part of the 2014 Stormont House Agreement between British and Irish Governments and the Northern Ireland Executive, it was agreed that work would be taken forward to deliver a pension for severely injured victims of the Troubles to promote reconciliation in Northern Ireland following this period of conflict. The Northern Ireland Executive did not deliver a scheme and the UK Government is making provisions for its establishment.

Issue to be addressed

- 7.2 More than 40,000 people are estimated to have been injured during the Troubles and many individuals continue to live with permanent disablement caused by serious physical and psychological injuries sustained in Troubles-related incidents, which has a serious impact on their day-to-day lives.
- 7.3 This instrument establishes a new Scheme for payments to those living with permanent disablement caused by injuries sustained in Troubles-related incidents. The scheme's main objective is to provide those entitled to payments with acknowledgement of the acute harm that they have suffered; as a result of the payments, the Scheme will also provide a measure of financial support, which may help to improve their quality of life and provide greater security around their financial future.

How the Scheme will operate

- 7.4 This instrument establishes a legal framework for the operation of a new victims' payments scheme; implementation of the scheme will then be delivered by an independent Board supported by the Northern Ireland Civil Service.
- 7.5 The scheme will make payments in respect of disablement attributable to injury in a Troubles-related incident. It will include both physical and psychological injuries. Disablement will be assessed by appropriately qualified health care professionals by comparing the effect of a relevant injury on an individual's ability to undertake day-to-day activities with that of a health person of the same age and gender not living with the same injury.
- 7.6 Payments will be backdated to the date of the Stormont House Agreement (December 2014) for the first three years of the scheme's running, and the scheme will be open for applications for five years from the date its creation is advertised in the Belfast Gazette.
- 7.7 The scheme will take a victim-centred approach and will assist applicants by sourcing relevant evidence (both of presence and injury), which will be considered to the

standard of the balance of probabilities. Applicants will have to prove that they were injured in a Troubles-related incident, or in its immediate aftermath. A Troubles-related incident is defined in the EF Act as “an incident involving an act of violence or force carried out in Ireland, the United Kingdom or anywhere in Europe for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.” The scheme will have date parameters of 1 January 1966 - 12 April 2010 (the latter being the date policing and justice were devolved to the Northern Ireland Executive), and the Board will have discretion to include incidents outside of that period if they consider that not to do so would undermine the purpose of the scheme.

- 7.8 Anyone injured in an incident in the United Kingdom will be eligible to apply. The scheme can also make payments to those injured in Europe who are UK citizens, or who are entitled to such citizenship on the basis of birth and the provisions of the Belfast/Good Friday Agreement, or who are Crown Servants.
- 7.9 If applicants disagree with decisions, they will have a right of appeal to be heard by a different Panel of the Board. Entitlements to other benefits will not be affected by the schemes. (The policy intention is for the same to be true for taxation, and for that policy intention to be achieved through provision in separate legislation.)
- 7.10 *Governance and Principles:* the instrument establishes a Victims’ Payments Board (the Board) to manage the Scheme. The Board will be independent of Government, but with administrative functions handled by a Northern Ireland Department. The Board will be responsible for determining applications, both whether someone is entitled and how much they are entitled to. The Board and its staff will operate within clear guiding principles so that the scheme remains victim-centred in approach, fair, proportionate and transparent, in order to meet the needs of victims and survivors effectively.
- 7.11 *Eligibility and Assessment:* The instrument sets out the criteria for applicants to be entitled to receive payments, including conditions around the causation of injury and the degree of disablement threshold. The instrument sets out that applications will be determined by a panel on behalf of the Board, with the assessment of the extent which an applicant has been permanently disabled assessed by a health care professional.
- 7.12 *Application Procedure:* The instrument sets out the process for making an application, how applicants will be notified and measures to ensure sensitive personal data is handled appropriately. It provides for the ability to appeal against determinations and assessments, for reassessment where a person’s condition worsens and allows for determinations to be reviewed by the Board.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Notwithstanding a small number of consequential amendments, consolidation is not relevant.

10. Consultation outcome

- 10.1 A formal public consultation was conducted from 22 October to 26 November 2019, which sought views on the proposed shape of this Scheme. This included questions on the purpose and principles of the scheme (including how to support applicants through the process); approach to financial payments (including adopting the existing degrees of disablement methodology that underpins the Industrial Injuries Scheme and the War Pension Scheme); options for payments (including backdating and lump sum options for claimants over 60); date parameters for the Troubles period; and eligibility in relation to prior convictions, as well as other compensation.
- 10.2 367 responses were received. The consultation team also met with a range of interested groups and parties to discuss the proposals and the issues arising from them.
- 10.3 In summary, there was broad support for the proposed purpose and principles of approach, and welcoming of the scheme. The consultation received a spectrum of different views across several areas, which is understandable given the historically divisive and emotive subject matter. The Government has sought to find a compromise in approach for these areas of divided opinion.
- 10.4 On the scheme's date parameters, for example, although an open-ended scheme is not considered appropriate, given the strength of opinion expressed, these regulations will confer on the Board the discretion to determine that a person is entitled to payments notwithstanding that the incident in which they were injured took place outside of the period from January 1966 to April 2010.
- 10.5 The Government's full response to this consultation can be found at the following link: www.gov.uk/nio.

11. Guidance

- 11.1 The Secretary of State may issue guidance to the Board about the exercise of discretion when considering the appropriateness of an award to an individual with a serious unspent conviction or in exceptional circumstances relying on material evidence. Any such guidance would be issued before the Regulation comes into force on 29 May 2020. The Board is required to issue guidance to health care professionals in respect of the carrying out of assessments.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the implementation of the scheme is expected to have little to no impact on businesses.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Regulations require the Secretary of State to prepare a report regarding the operation of the scheme, in consultation with the President of the Board, the Executive Office and the department carrying out administrative functions for the

Board. The review must be carried out in the 12-month period which follows the first 2 years of the Scheme being in operation.

15. Contact

- 15.1 Chris Atkinson at the Northern Ireland Office (telephone: 0207 210 6454 or email: chris.atkinson@nio.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Ruth Sloan, Deputy Director for the Legacy Group, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Secretary of State at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.