



Criminal Justice Act 1988

1988 CHAPTER 33

PART VII

COMPENSATION BY COURT AND CRIMINAL INJURIES COMPENSATION BOARD

Powers of court

104 Compensation orders

(1) At the end of subsection (1) of section 35 of the Powers of Criminal Courts Act 1973 there shall be added the words “or to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road; and a court shall give reasons, on passing sentence, if it does not make such an order in a case where this section empowers it to do so”.

(2) The following subsections shall be substituted for subsection (3) of that section—

“(3) A compensation order may only be made in respect of injury, loss or damage (other than loss suffered by a person’s dependants in consequence of his death) which was due to an accident arising out of the presence of a motor vehicle on a road, if—

(a) it is in respect of damage which is treated by subsection (2) above as resulting from an offence under the Theft Act 1968; or

(b) it is in respect of injury, loss or damage as respects which—

(i) the offender is uninsured in relation to the use of the vehicle; and

(ii) compensation is not payable under any arrangements to which the Secretary of State is a party;

and, where a compensation order is made in respect of injury, loss or damage due to such an accident, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

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- (3A) A vehicle the use of which is exempted from insurance by section 144 of the Road Traffic Act 1972 is not uninsured for the purposes of subsection (3) above.
- (3B) A compensation order in respect of funeral expenses may be made for the benefit of anyone who incurred the expenses.
- (3C) A compensation order in respect of bereavement may only be made for the benefit of a person for whose benefit a claim for damages for bereavement could be made under section 1A of the Fatal Accidents Act 1976.
- (3D) The amount of compensation in respect of bereavement shall not exceed the amount for the time being specified in section 1A(3) of the Fatal Accidents Act 1976.”.

105 Enforcement of compensation orders

The following sections shall be substituted for sections 36 to 38 of the Powers of Criminal Courts Act 1973—

“36 Enforcement and appeals

- (1) A person in whose favour a compensation order is made shall not be entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.
- (2) Rules under section 144 of the Magistrates' Courts Act 1980 may make provision regarding the way in which the magistrates' court for the time being having functions (by virtue of section 41(1) of the Administration of Justice Act 1970) in relation to the enforcement of a compensation order is to deal with money paid in satisfaction of the order where the entitlement of the person in whose favour it was made is suspended.
- (3) The Court of Appeal may by order annul or vary any compensation order made by the court of trial, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as varied.
- (4) Where the House of Lords restores a conviction, it may make any compensation order which the court of trial could have made.
- (5) Where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
 - (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
 - (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

37 Review of compensation orders

At any time before the person against whom a compensation order has been made has paid into court the whole of the compensation which the order

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requires him to pay, but at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside, the magistrates' court for the time being having functions in relation to the enforcement of the order may, on the application of the person against whom it was made, discharge the order, or reduce the amount which remains to be paid, if it appears to the court—

- (a) that the injury, loss or damage in respect of which the order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or
- (b) in the case of an order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
- (c) that the means of the person against whom the order was made are insufficient to satisfy in full both the order and a confiscation order under Part VI of the Criminal Justice Act 1988 made against him in the same proceedings; or
- (d) that the person against whom the order was made has suffered a substantial reduction in his means which was unexpected at the time when the compensation order was made, and that his means seem unlikely to increase for a considerable period;

but where the order was made by the Crown Court, a magistrates' court shall not exercise any power conferred by this section in a case where it is satisfied as mentioned in paragraph (c) or (d) above unless it has first obtained the consent of the Crown Court.

38 Effect of compensation order on subsequent award of damages in civil proceedings

- (1) This section shall have effect where a compensation order has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined.
- (2) The damages in the civil proceedings shall be assessed without regard to the order; but the plaintiff may only recover an amount equal to the aggregate of the following—
 - (a) any amount by which they exceed the compensation; and
 - (b) a sum equal to any portion of the compensation which he fails to recover,

and may not enforce the judgment, so far as it relates to a sum such as is mentioned in paragraph (b) above, without the leave of the court.”

106 Discretion of Crown Court to specify extended period of imprisonment in default of payment of compensation

The following subsections shall be substituted for section 41(8) of the Administration of Justice Act 1970—

- “(8) Subject to subsection (8A) below, where in the case specified in paragraph 10 of Schedule 9 to this Act the Crown Court thinks that the period for which the person subject to the order is liable apart from this subsection to be committed

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to prison for default under the order is insufficient, it may specify a longer period for that purpose; and then, in the case of default—

- (a) the specified period shall be substituted as the maximum for which the person may be imprisoned under section 76 of the Magistrates' Courts Act 1980; and
- (b) paragraph 2 of Schedule 4 to that Act shall apply, with any necessary modifications, for the reduction of the specified period where, at the time of the person's imprisonment, he has made part payment under the order.

(8A) The Crown Court may not specify under subsection (8) above a period of imprisonment longer than that which it could order a person to undergo on imposing on him a fine equal in amount to the sum required to be paid by the order.”.

Compensation for victim out of forfeited property

107 Power to make order applying proceeds of sale of property forfeited by offender for benefit of victim

(1) The following section shall be inserted after section 43 of the Powers of Criminal Courts Act 1973—

“43A Application of proceeds of forfeited property

- (1) Where a court makes an order under section 43 above in a case where—
 - (a) the offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage; or
 - (b) any such offence is taken into consideration by the court in determining sentence,
 the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court shall be paid to that person.
- (2) The court may only make an order under this section if it is satisfied that but for the inadequacy of the means of the offender it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.
- (3) An order under this section has no effect—
 - (a) before the end of the period specified in section 43(4)(a) above; or
 - (b) if a successful application under section 1(1) of the Police (Property) Act 1897 has been made.”.

The Criminal Injuries Compensation Scheme

108 The Criminal Injuries Compensation Board and the administration of the scheme

(1) The Criminal Injuries Compensation Board (“the Board”) shall by that name be a body corporate.

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- (2) The Board shall administer the scheme for the payment of compensation for criminal injuries established by the following provisions of this Part of this Act (in this Act referred to as “the scheme”) and shall be responsible for determining claims for compensation under the scheme and for paying compensation due under it.
- (3) Schedule 6 to this Act shall have effect with respect to the Board and Schedule 7 shall have effect with respect to the scheme.

109 Criminal injuries

- (1) In this Part of this Act “criminal injury” means any personal injury caused by—
 - (a) conduct constituting—
 - (i) an offence which is specified in subsection (3) below; or
 - (ii) an offence which is not so specified but which requires proof of intent to cause death or personal injury or recklessness as to whether death or personal injury is caused; or
 - (b) any of the following activities—
 - (i) the apprehension or attempted apprehension of an offender or suspected offender;
 - (ii) the prevention or attempted prevention of the commission of an offence; or
 - (iii) assisting a constable engaged in any of the activities mentioned in sub-paragraph (i) or (ii) above;and “personal injury” includes any disease, any harm to a person’s physical or mental condition and pregnancy.
- (2) Harm to a person’s mental condition is only a criminal injury if it is attributable—
 - (a) to his having been put in fear of immediate physical injury to himself or another; or
 - (b) to his being present when another sustained a criminal injury other than harm to his mental condition.
- (3) The offences mentioned in subsection (1)(a)(i) above are—
 - (a) rape;
 - (b) assault;
 - (c) an offence which falls to be charged as arson;
 - (d) wilful fireraising;
 - (e) any offence under section 2 (causing explosion likely to endanger life or property) or 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) of the Explosive Substances Act 1883;
 - (f) an offence under section 16 (possession of firearm with intent to injure), 17 (use of firearm to resist arrest), 18 (carrying firearm with criminal intent), 19 (carrying firearm in a public place) or 20 (trespassing with firearm) of the Firearms Act 1968;
 - (g) an offence under section 1 (riot), 2 (violent disorder) or 3 (affray) of the Public Order Act 1986;
 - (h) mobbing;
 - (j) kidnapping;
 - (k) false imprisonment;

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- (l) abduction;
 - (m) trespass on a railway; and
 - (n) any attempt to commit an offence mentioned in this subsection.
- (4) For the purposes of this Part of this Act, a person's conduct shall be treated as constituting an offence notwithstanding that he may not be convicted of the offence by reason of age, insanity or diplomatic immunity.

110 Qualifying injuries

- (1) Compensation for a criminal injury shall only be payable under this Part of this Act if the injury is a qualifying injury.
- (2) A criminal injury is only a qualifying injury if it is sustained—
- (a) in Great Britain;
 - (b) within the limits of the territorial waters adjacent to the United Kingdom;
 - (c) on board a British ship, a British aircraft or a British hovercraft;
 - (d) on, under or above an installation in a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation; or
 - (e) on, under or above any waters in respect of which an Order in Council made under section 23 of the Oil and Gas (Enterprise) Act 1982 provides that questions arising from acts or omissions on, under or above such waters are to be determined in accordance with the law of England and Wales or the law of Scotland.
- (3) In subsection (2) above—
- “British aircraft” means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft), or one of Her Majesty's aircraft;
- “British hovercraft” means a British-controlled hovercraft within the meaning of that section (as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968), or one of Her Majesty's hovercraft; and
- “British ship” means—
- (a) any vessel used in navigation which is owned wholly by persons of the following descriptions, namely—
 - (i) British citizens; and
 - (ii) bodies corporate incorporated under the law of some part of, and having their principal place of business in, the United Kingdom;
 or
 - (b) one of Her Majesty's ships.
- (4) The references to Her Majesty's aircraft, hovercraft and ships in subsection (3) above are references to aircraft, hovercraft or ships which belong to, or are exclusively used in the service of, Her Majesty in right of the government of the United Kingdom.
- (5) Where any injury which is a criminal injury by virtue of section 109(1)(a) above is sustained by a person not under the age of 18 years who, when he sustains the injury, is living in the same household as the person or, if more than one, any of the persons, responsible for causing it, that injury is not a qualifying injury unless—

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- (a) the Board are satisfied in relation to the person responsible for causing the injury or, where more than one person is responsible for causing it, each of the persons responsible who was living in the same household as the person injured when the injury was sustained—
 - (i) that he has been prosecuted in connection with the injury; or
 - (ii) that there is a sufficient reason why he has not been prosecuted; and
 - (b) the Board are satisfied—
 - (i) that the person injured has ceased to live, and does not intend to live again, in the same household as the person responsible for causing the injury or, where more than one person is responsible for causing it, any of the persons responsible who was living in the same household as the person injured when the injury was sustained; or
 - (ii) that the person injured has not so ceased to live but that the reason why he has not so ceased to live is that circumstances prevent him from doing so.
- (6) Where a person accidentally sustains an injury which is a criminal injury only by virtue of section 109(1)(b) above, that injury is not a qualifying injury unless the Board are satisfied that the risk he was taking when he was injured was an exceptional risk which was justified in all the circumstances.
- (7) Where any criminal injury is sustained in circumstances such that compensation in respect of the injury is payable—
 - (a) under any policy of insurance maintained in pursuance of Part VI of the Road Traffic Act 1972 (compulsory insurance in relation to the use of a motor vehicle on a road); or
 - (b) under any arrangements for the compensation of victims of uninsured or unidentified drivers to which the Secretary of State is a party;that injury is not a qualifying injury.
- (8) Any reference in this section to a person who is responsible for causing an injury includes, where the injury is a criminal injury by virtue of an offence, a reference to any person who is a party to the commission of that offence.

111 Awards of compensation

- (1) An award of compensation may be made—
 - (a) to any person who satisfies the Board that he has sustained a qualifying injury;
 - (b) to any person who satisfies the Board that he is a dependant of a person who died after sustaining a qualifying injury (whether or not he died as a result of it);and in this subsection “satisfies” means satisfies on a balance of probabilities.
- (2) The heads of compensation are those specified in subsections (3) to (6) below.
- (3) An award may be made under subsection (1)(a) above—
 - (a) for the injury; and
 - (b) for any loss of or damage to property of the claimant which occurred in the course of his sustaining the injury,but compensation shall only be payable under paragraph (b) above if he relied on the property as a physical aid and for damage only if the damage impaired the utility of the property as a physical aid and shall only be for the cost of replacing it with other

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property of equal utility as a physical aid or carrying out repairs to restore its utility as a physical aid.

- (4) If a person dies as a result of a qualifying injury—
- (a) an award of compensation for funeral expenses may be made to any person other than a public authority but shall not exceed a reasonable amount;
 - (b) where a claim falls to be determined in accordance with the rules of the law of England and Wales, an award of compensation for bereavement may be made to any person falling within section 1A(2) of the Fatal Accidents Act 1976;
 - (c) where a claim falls to be determined in accordance with the rules of the law of Scotland, an award of compensation for loss of society may be made to any person who is a member of the deceased's immediate family within the meaning of section 10(2) of the Damages (Scotland) Act 1976; and
 - (d) an award may be made to a dependant of the deceased (whether or not an award is made to him or to any other person under paragraph (a), (b) or (c) above) in respect of any loss of support suffered by the dependant.
- (5) Subject to subsection (8) below, if a person who has sustained a qualifying injury dies otherwise than as a result of it, the Board may award compensation to a dependant of his in respect of any loss which he has suffered by reason—
- (a) of any reduction in earnings (not being prospective earnings) by the deceased; and
 - (b) of any expenses and liabilities incurred by the deceased as a result of the injury.
- (6) If—
- (a) a woman is awarded compensation for rape; and
 - (b) she has given birth to a child conceived as a result of the rape; and
 - (c) at the time of the award she intends to keep the child,
- the Board shall award her the additional statutory sum in respect of each child so conceived that she then intends to keep.
- (7) The Board may make an interim award, but without prejudice to their powers on a final determination.
- (8) If a person who has sustained a qualifying injury dies otherwise than as a result of it, the Board may not award compensation to a dependant of his if before he died he became entitled, otherwise than on an interim award, to a payment of compensation in respect of it.
- (9) If—
- (a) a deceased person was entitled to payment of compensation for an injury; and
 - (b) a claim for compensation for the same injury is made by one of his dependants,
- any compensation awarded to the dependant shall be reduced by the amount of the compensation to payment of which the deceased was entitled; and proportionate reductions shall be made on awards to two or more dependants.
- (10) Where a person has been awarded compensation by the Board in respect of a qualifying injury sustained by him, he may be awarded further compensation in respect of the injury if the Board are satisfied—
- (a) that since the date of the previous award his medical condition has deteriorated as a result of having sustained the injury; and

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- (b) that the extent to which his condition has so deteriorated is such that it would be unjust not to make an award of further compensation to him in respect of the injury.
- (11) In this Part of this Act—
- “the additional statutory sum” means £5,000 or such other sum as may for the time being be specified by virtue of an order under subsection (12) below; and
 - “dependant”—
 - (a) where the appropriate law for the determination of a claim is the law of England and Wales, has the same meaning as in the Fatal Accidents Act 1976; and
 - (b) where it is the law of Scotland, means a relative within the meaning of the Damages (Scotland) Act 1976.
- (12) The Secretary of State may by order made by statutory instrument substitute a different sum for the sum specified in subsection (11) above.
- (13) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

112 Powers to withhold and reduce compensation

- (1) It is for the claimant to satisfy the Board, on a balance of probabilities—
- (a) that he took all reasonable steps within a reasonable time to inform the police, or such other authority as the Board consider appropriate, of the circumstances of the injury to which the claim relates and that he has co-operated fully with the police, or with such other authority as the Board consider appropriate, in bringing to justice any person responsible for causing the injury;
 - (b) that he has given the Board, or such other authority as the Board consider appropriate, all the assistance in connection with the claim which it is reasonable for him to give; and
 - (c) that there is no possibility that a person responsible for causing the injury will benefit from an award,
- and if a claimant fails so to satisfy the Board, they may, if they think fit, refuse an award or award less than they would otherwise have awarded.
- (2) The Board may also, if they think fit, refuse an award or award less than they would otherwise have awarded because of any of the following—
- (a) criminal convictions or unlawful conduct of the claimant;
 - (b) conduct on his part connected with the injury.
- (3) The references to convictions and conduct in subsection (2) above are references to convictions and conduct at any time, including a time after the injury.
- (4) Where the person who sustained the injury is dead, the references to the claimant in subsections (1)(a) and (b) and (2) above shall include references to the person who sustained that injury.
- (5) Where an injury which is a criminal injury by virtue of section 109(1)(a) above is sustained by a person who, when he sustained it—
- (a) was under the age of 18 years; and

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(b) was living in the same household as the person or, if more than one, any of the persons, responsible for causing it,
the Board shall consider whether, in all the circumstances, it is in the interest of the person who sustained the injury to make an award of compensation to him and shall not make an award unless they are satisfied that it is in his interest.

113 Right of appeal

- (1) If the Board have determined a claim after hearing, an appeal on any ground which involves a question of law alone shall lie—
 - (a) to the High Court if they determined it under the law of England and Wales; and
 - (b) to the Court of Session if they determined it under the law of Scotland.
- (2) No appeal to the Court of Appeal shall be brought from a decision of the High Court under this section except with the leave of the High Court or the Court of Appeal.
- (3) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

114 Minimum awards

- (1) The Secretary of State may by order provide that the Board shall not make any award of compensation, other than an award in respect of funeral expenses, which is less than the minimum amount specified in the order.
- (2) An order under this section may make different provision for different cases or classes of case.
- (3) An order under this section shall be made by statutory instrument.
- (4) A statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

115 Reimbursement and recovery

- (1) Where—
 - (a) a person has been convicted in England or Wales of an offence; and
 - (b) the Board have made an award of compensation in respect of an injury which is a criminal injury by virtue of the offence,proceedings may be brought by the Board in a county court for an order for the repayment by the offender to the Board of the whole of the award or such part of it as the court thinks fit.
- (2) The Board shall only make an application for an order under subsection (1) above if they have reason to believe that the offender is able to pay the whole or a substantial part of the award.
- (3) In considering whether to make an order under subsection (1) above, the court shall have regard to the financial position of the offender and to such other matters (not

including the question whether he was properly convicted) as the court considers relevant.

- (4) Where after an award of compensation under this Part of this Act has been made to a person he receives any payment which, had he received it before the making of the award, would, under any provision contained in Schedule 7 to this Act, have led to any reduction in the amount of compensation payable to him he shall be liable to repay to the Board a sum equal to the amount of that reduction.
- (5) The Board may set-off any sum owed to them by any person by virtue of subsection (4) above against any compensation under this Part of this Act to which that person is or becomes entitled.
- (6) Where by virtue of any order under section 35 of the Powers of Criminal Courts Act 1973 (compensation orders against convicted persons) compensation is required to be paid for any personal injury, loss or damage which the Board are satisfied has been the subject of compensation under this Part of this Act, they may by notice require the magistrates' court for the time being having functions in relation to the enforcement of that order to pay to them any amount recovered in pursuance of that order in respect of any such personal injury, loss or damage.

116 Reimbursement and recovery in Scotland

- (1) Where any person has been convicted in Scotland of an offence and the Board have made an award of compensation in respect of an injury which is a criminal injury by virtue of the offence, the sheriff may, on a summary application made by the Board, require the offender to reimburse to the Board the whole or any specified part of the award.
- (2) In considering whether to make an order under subsection (1) above the sheriff shall have regard to the financial position of the offender and to such other matters (not including the question whether he was properly convicted) as the sheriff considers relevant.
- (3) The Board shall only make an application for an order under subsection (1) above if they have reason to believe that the offender is able to pay the whole or a substantial part of the award.
- (4) Section 115(4) and (5) above shall have effect in relation to Scotland.
- (5) Where by virtue of an order under section 58 of the Criminal Justice (Scotland) Act 1980 (compensation orders against convicted persons) compensation is required to be paid for any personal injury, loss or damage for which the person in whose favour the order is made has been compensated by an award under this Part of this Act, the Board may by notice require the clerk of the court having power to enforce the order to pay to them any amount recovered in pursuance of the order in respect of any such personal injury, loss or damage.

117 Inalienability of compensation awards

Every assignment or in Scotland assignation of, or charge on, an award of compensation under this Part of this Act and every agreement to assign or charge such an award shall be void; and, on the bankruptcy of a person in whose favour an award is made or in Scotland the sequestration of such a person's estate, the award shall not pass to any trustee or other person acting on behalf of his creditors.