



HM Government

A Legal Framework for a Troubles-related incident Victims Payment Scheme

Implementation of the legal duty under section 10 of the Northern Ireland (Executive Formation etc.) Act 2019

Government consultation

22 October 2019

FOREWORD BY THE SECRETARY OF STATE FOR NORTHERN IRELAND

More than 21 years on from the signing of the Belfast/Good Friday Agreement, Northern Ireland is a different place in so many positive ways. But the legacy of the Troubles still casts a long shadow over many aspects of life in the here and now.

More than 3,500 people were killed and an estimated 40,000 injured during that awful period. It is clear through engagement with victims, survivors and others that the hurt and suffering caused by decades of terrible violence have had a profound and deep-rooted impact not just on individuals but on generations of families in Northern Ireland, Great Britain and beyond.

Those living with the consequences of serious injury do so with a constant reminder of those dark days in our history. Many of their injuries are physical but a significant number of survivors also continue to suffer from deep psychological trauma. It is, therefore, not surprising that many struggle with normal daily routine tasks, and are struggling to cope financially.

There are no easy answers as to how we should address the legacy of Northern Ireland's past. However, as a society we have a moral duty to acknowledge and recognise the unacceptable suffering of those seriously injured in the Troubles as part of wider efforts to support Northern Ireland in building its future by doing more to address its past.

The Stormont House Agreement contained a commitment that "further work will be undertaken to seek an acceptable way forward on the proposal for a pension for severely physically injured victims in Northern Ireland". For too long this matter has stalled on the question of who should and who should not benefit from it.

In this regard the UK Government has and continues to be clear that those injured by their own hand should not in any way benefit from any

proposals to provide acknowledgement and recognition to victims injured through no fault of their own.

While it will always be the preference of this Government that such provision is made by a Northern Ireland Executive, in its absence we are publishing this proposal for how a scheme could be delivered. This is a crucial element of the Stormont House Agreement's proposals to help address the legacy of the Troubles, and it is vital that we make progress across this and related matters. We are committed to delivering better outcomes for all those affected by the Troubles and to continuing to play our part in promoting peace and reconciliation in Northern Ireland.

We would be grateful to hear views from anyone with an interest in this proposed scheme.

Rt Hon Julian Smith MP
Secretary of State for Northern Ireland

CONTENTS

FOREWORD BY THE SECRETARY OF STATE FOR NORTHERN IRELAND	2
CONTENTS	4
SECTION ONE: OVERVIEW	5
Introduction	5
About this consultation	7
Structure of the consultation	11
SECTION TWO: CONSULTATION PROPOSALS	12
Purpose of the scheme and overview of other support available	12
Underpinning principles	14
Approach to financial payments	16
Handling claims, previous compensation and disagreeing with decisions	28
Support	31
SECTION 3 - SUPPLEMENTARY INFORMATION	34
Annex A: Consultation questions	35
Annex B: Extract from the Northern Ireland (Executive Formation etc.) Act 2019	44
Annex C: Equality Impact Assessment	47

SECTION ONE: OVERVIEW

Introduction

1. 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. Those injuries have a serious impact on people's day to day lives and their ability to undertake certain activities.
2. There are no easy answers as to how we should address the legacy of Northern Ireland's past. However, as a society we have a moral duty to acknowledge and recognise the harm caused to those seriously injured in the Troubles. For this reason, it was agreed as part of the Stormont House Agreement negotiations in 2014 that "further work [would] be undertaken to seek an acceptable way forward on the proposal for a pension for severely physically injured victims in Northern Ireland", as a measure to promote reconciliation in Northern Ireland. This scheme would seek to provide some acknowledgement of the damage caused, and a measure of additional financial support for the futures of victims, and, to a limited extent, their loved ones.
3. Progress has stalled on this matter primarily due to debates about exclusions from the scheme. We believe that, taking account of the differing views and sensitivities around this issue, a justifiable way forward would be for provisions to make clear that those injured at their own hand are not eligible for these awards. This consultation sets out a proposed model for delivery of the scheme and seeks views on that approach.
4. Under the provisions of the Northern Ireland (Executive Formation etc.) Act 2019, the UK Government is required to bring forward legislation providing for a scheme of payments to those living with injuries sustained in Troubles-related incidents by 31 January 2020, if an Executive is not formed by 21 October; and for that legislation to have effect by 31 May 2020. The UK Government remains committed to the

restoration of power-sharing in Northern Ireland; this continues to be our first priority.

5. The WAVE injured group is to be particularly commended for having fought bravely, tirelessly and passionately for a scheme of regular payments to be made to the injured. It is right that we pay tribute to their hard work and campaigning in getting us this far, and acknowledge the work of the many other groups and organisations which continue to support victims of the Troubles.

About this consultation

Purpose

6. Under the provisions of the Northern Ireland (Executive Formation etc.) Act 2019, the UK Government will bring forward legislation providing for a scheme of payments to those living with injuries sustained in Troubles-related incidents by 31 January 2020, if an Executive is not formed by 21 October; and will make arrangements for that legislation to have effect by 31 May 2020.
7. The Government is seeking views on these proposals and specifically on the matters covered by this consultation from all interested parties, individuals and groups from across the United Kingdom.
8. The proposals set out here require legislation and will have a direct impact on peoples' lives. The Government recognises the need to keep the public informed on such important matters and to allow people the opportunity to comment on the policy proposals. This consultation therefore invites people to answer a number of questions in relation to the proposals. These questions are posed throughout the document. A complete list of questions can be found at the end of the consultation document.

Consultation scope

9. This consultation applies to all of the United Kingdom.

Timetable

10. The consultation closes to responses on 26 November 2019. This is shorter than our standard period of consultation due to the requirement to lay Regulations providing for this scheme by 31 January 2020 under the terms of the Northern Ireland (Executive Formation etc) Act 2019.

Responding to the consultation

11. The Government would welcome feedback from anyone with an interest or view on the proposed shape of this reform, addressing the specific questions listed throughout the consultation document and set out in Annex A on page 33.

12. Our preferred method of receiving your response is by our electronic consultation questionnaire which can be found at the following address: <https://consultations.nidirect.gov.uk/nio-implementation-team/vpconsultation-1/>
13. Alternatively, you may complete the response form found alongside this consultation document. If possible, we would be grateful for this form to be returned to us electronically as an email attachment. The email address for responses or queries is: vpconsultation@nio.gov.uk
14. Postal responses can be sent to:

Victims Payments consultation
Northern Ireland Office
Stormont House
Stormont Estate
Belfast
BT4 3SH
15. When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
16. A hard copy of this consultation document, and the corresponding response form is available on request, using the email address provided above.

Consultation Principles

17. This consultation is being conducted in line with the Cabinet Office consultation principles published in January 2016. A copy of the principles can be found online at: <https://www.gov.uk/government/publications/consultation-principles-guidance>
18. It is also being conducted in line with the Northern Ireland Office Equality Scheme which can be found online at:

<https://www.gov.uk/government/publications/nio-equality-scheme>

19. An Equality Screening of the impact of the proposals in this consultation is available on the consultation website at or can be obtained in hardcopy on request.

Confidentiality

20. The information you send us may need to be shared with colleagues within the Northern Ireland Office (NIO), other relevant Government departments and relevant Northern Ireland Executive departments. The information might also be published in a summary of responses received and referred to in the published consultation report. The Government summary of responses to this consultation and published consultation report will include a list of organisations that responded but not individual names without receiving permission from the individual. Other personal details will not be published in the consultation response.
21. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of this public consultation exercise, it is understood that you consent to its possible disclosure and publication. If this is not the case, you should limit any personal information provided, or omit it entirely. If you want the information in your response to the consultation to be kept confidential, please state so clearly in your response - although please note that this cannot be guaranteed.
22. To find out more about the general principles of Freedom of Information and how it is applied in the Northern Ireland Office, please contact: foi@nio.gov.uk
23. In some consultations, external analysts may be contracted for the purpose of response analysis. If external analysts are used with this consultation, the Northern Ireland Office may share information you provided in response to the consultation, including personal data, with a third party of contracted external analysts.

24. The Northern Ireland Office is the data controller in respect of any personal data that you provide and NIO's Information Charter, which sets out the standards you can expect in respect of the handling of your personal data, can be found at:

<https://www.gov.uk/government/organisations/northern-ireland-office/about/personalinformation-charter>

Government response

25. A summary of responses to this consultation and details of the action that the Government will take, or has taken, will be published on the Government website at www.gov.uk/nio.
26. The NIO will aim to publish this information within twelve weeks of the consultation closing date.

Structure of the consultation

27. **Section 1** provides an overview of the consultation.
28. **Section 2** sets out the UK Government's proposals on a framework for a scheme of payments to those living with disablement caused by injuries sustained in Troubles-related incidents. There are 16 questions in relation to these proposals which respondents may wish to answer.
29. **Section 3** provides the following supplementary information in relation to this consultation's proposals:
 - summary of consultation questions;
 - an extract from the Northern Ireland (Executive Formation etc.) Act 2019 - Section 10 provisions, relating to the Victims Payment scheme; and
 - information about the proposal's initial Equality Impact Assessment.

SECTION TWO: CONSULTATION PROPOSALS

Purpose of the scheme and overview of other support available

30. The intended effect of this scheme is to provide those living with permanent disablement caused by an injury sustained in a Troubles-related incident with an acknowledgement of the harm which they have suffered and a measure of financial support, which may help to improve their quality of life and provide greater security around their financial future. This financial aspect is particularly important because in many cases an injury will have reduced or affected individuals' abilities to accrue an occupational pension to support them, and in many cases their families, in old age.
31. The Stormont House Agreement framed a "victims pension", and other legacy initiatives, as part of "*an approach to dealing with the past ... which respects the following principles: promoting reconciliation; upholding the rule of law; acknowledging and addressing the suffering of victims and survivors; facilitating the pursuit of justice and information recovery; is human rights compliant; and is balanced, proportionate, transparent, fair and equitable ... as part of the transition to long-term peace and stability*".
32. The scheme's proposed purpose would therefore be to provide those living with permanent disablement caused by injury through no fault of their own in a Troubles-related incident with payments in:
 - acknowledgement of the acute harm which they have suffered;
 - recognition of the implications of living with disablement caused by a severe Troubles-related injury and the associated impact of such disablement on carers, who are often family members; and
 - recognition that in many cases coping with the disablement caused by the serious injury had an adverse financial impact on individuals, and their families.

33. This scheme would sit alongside, rather than replace, an existing range of support services and mechanisms available to the many people affected in different ways by the Troubles. Provisions are already in place to look after those injured, bereaved or providing care through needs-based support. A number of support and wellbeing services are available through the Victims and Survivors Service partner organisations to those with needs relating to the Northern Ireland conflict. These range from psychological services to disability aids, and advocacy services to persistent pain management. These wider services are quite correctly available to many more than our scheme - which is targeted at those living with the ongoing effects of serious injury - is intended to help. We also welcome ongoing work to establish a Regional Trauma Network, which aims to address the significant mental health impact of the Troubles (and other trauma) experienced by the broader population in Northern Ireland.
34. In summary, the proposed payments scheme would provide acknowledgement and additional financial support to those living with permanent physical or psychological injuries which can be demonstrated to have been caused by a documented Troubles-related incident.

Question 1: Do you agree with the broad proposed purpose of the scheme?	Yes	No
<p>If you answered 'no', what would you change or what do you think the purpose of the scheme should be?</p>		

Underpinning principles

35. It is vital that all victims and survivors services, and indeed public services more broadly, have clear guiding principles to ensure that they meet the needs of victims and survivors effectively. This ensures that individuals both running and accessing the scheme are clear about what they can expect from it. We propose that this scheme should be:

- **Victim-centred:** the needs of victims must be a high priority given the aim to acknowledge and help meet their needs, and to avoid the risk of retraumatisation, for example through an insensitively handled assessment processes.
- **Fair and proportionate:** the scheme cannot provide restitution (putting people back to where they were), but it ought to provide most help where there is most need on a clearly evidenced and understood basis.
- **Transparent:** it should be clear who will benefit from the scheme and in what ways.
- **Simple to navigate:** the scheme must be as user-friendly as possible for individuals and their families.
- **In line with current medical research/best practice:** the scheme should support wellness and not disincentivise treatment.
- **Consistent with the Government's commitment that it will not be open to those injured through fault of their own:** individuals who were injured as a result of their involvement in the orchestration of the relevant incident, as evidenced by a relevant criminal conviction, will not be eligible for payments.
- **Financially viable and sustainable:** if the scheme is to provide ongoing support and a degree of financial certainty, it must be well managed, affordable and robust.

Question 2: Do you agree with the underpinning principles set out above?	Yes	No
If you answered 'no', what principles do you think should be removed, added or amended?		

Approach to financial payments

36. Seeking to put monetary figures on the impact of living with a serious injury - both psychological and physical - is challenging and uncomfortable; we are dealing with individuals' pain, suffering, loss and trauma, and this cannot be adequately quantified. We have considered the merits of providing a flat rate payment to those who have been seriously injured in troubles related incidents. A flat rate payment would provide acknowledgment and recognition to all those eligible to receive a payment and could be comparatively more straightforward to implement. However, we know that the severity of injury suffered by victims of Troubles related incidents has impacted lives in markedly different ways. We therefore believe it is necessary to find a way to ensure that the scheme is fair, transparent and proportionate - reflecting varying levels of need.
37. We propose to make payments on a sliding scale, depending on the level of severity of physical or psychological disablement caused by injury. The proposed amounts to be paid would be similar in amount to those received by people injured in industrial accidents and ongoing payments made in recognition and support of those who served in the security forces during the Troubles.¹
38. In order to effectively and fairly grade the level of payments, reflecting the varying severity of physical and psychological injuries, we propose to adopt the established 'prescribed degrees of disablement' approach which underpins the Industrial Injuries Disablement Scheme (IIDS) and the War Pension Scheme.
39. This approach assesses the impact on functioning of specific injuries, judging the impact of that injury on an individual's ability to carry out their day-to-day activities including work. Usual assessment rates for specific injuries² are plotted at points on a scale, and healthcare professionals make judgements about an individual's particular needs in relation to those rates, and plot other and multiple injuries in relation to these using

¹ Namely the Industrial Injuries Disablement Benefit and War Pension Scheme.

² Known as prescribed injuries

prescribed injuries as their guideposts. The broad approach taken compares an individual's functioning with that of a healthy person of the same gender and a similar age not living with the same injury.

40. The table below gives an indication of where particular physical injuries ordinarily sit on that scale.

100%	Loss of both hands or amputation at higher sites Loss of a hand and a foot Loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential Absolute deafness Amputation of a leg or arm
90%	Amputation at hip
80%	Amputation below shoulder with stump less than 20.5 centimetres from tip of acromion Amputation through feet proximal to the metatarso-phalangeal joint Amputation below hip with stump not exceeding 13 centimetres in length measured from tip of great trochanter
60%	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.5 centimetres below tip of olecranon Amputation at knee resulting in end-bearing stump or below knee with stump not exceeding 9 centimetres
50%	Loss of four fingers of one hand Amputation below knee with stump exceeding 9 centimetres but not exceeding 13 centimetres
40%	Loss of thumb and its metacarpal bone Loss of all toes of both feet through the metatarso-phalangeal joint Amputation below knee with stump exceeding 13 centimetres Loss of one eye, without complications, the other being normal
30%	Loss of thumb Loss of three fingers of one hand Loss of all toes of both feet proximal to the proximal inter-phalangeal joint Amputation of one foot resulting in an end-bearing stump

	Amputation through one foot proximal to the metatarso-phalangeal joint Loss of vision of one eye, without complications or disfigurement of the eyeball, the other being normal
20%	Loss of two fingers of one hand Loss of terminal phalanx of thumb Loss of all toes of both feet distal to the proximal inter-phalangeal joint

41. The industrial injuries scheme makes regular payments to those who have a 14% degree of disablement or above (paid at the 20% rate), as loss of an index finger is considered to have an ongoing impact on an individual's ability to work and undertake day-to-day activities - for example, impacting their ability to type, write or operate certain types of machinery.
42. As with physical injury, degree of disablement in respect of psychological injury is assessed by considering the impact of that injury attributable to a particular cause (service, an occupational accident/injury, or under our proposal a Troubles-related incident).
43. Great care is taken, both in assessing physical and psychological injury, to establish causation, relevance, and prognosis, so that correct attribution to a cause can be made. Assessment is undertaken by healthcare professionals trained in disability assessment medicine who must document evidence considered, any necessary examinations undertaken and reasons for their advice. There are medically-accepted diagnostic tools and techniques which provide a reasonable ground for such assessments. Taking Post-Traumatic Stress Disorder (PTSD) as an example, international standards (Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and International Classification of Diseases 11th Revision (ICD 11)) set out its key diagnostic features.
44. The table below gives a potential indication of where functional impact of disablement as a result of psychological injury is likely to fall on the degree of disablement scale.

Severity	Degree of disablement
Mild	11-20%
Mild to moderate	21-30%
Moderate	31-50%
Moderately severe	51-80%
Severe	81% +

45. There are clear medical links between psychological and physical injuries, and this Government is committed to providing greater support for mental health needs across the UK. We therefore intend that the same methodology and payment levels will apply for both physical and psychological injury. Assessments will be made on a case-by-case basis for both physical and psychological injury, but the very individual nature of psychological injury means that common conditions cannot currently be meaningfully assigned a “usual” degree of disablement as is done when it comes to those scheduled physical injuries shown in the Table above.
46. It is proposed that the scheme provide awards to those living with permanent disablement. By this we mean that their disablement has reached a settled state with appropriate treatment. Otherwise individuals would likely have to be subjected to regular re-screenings and so would have less certainty about continuing payments. We consider these arrangements would be fair and justifiable given the passage of time since the end of the Troubles.
47. The scheme will not put people back in the exact financial position that they would have been in when they were injured; nor is it possible to adequately make up for harm and trauma suffered. It is intended,

however, that the payments will provide an acknowledgement and help deliver a measure of financial recompense for harm suffered and the associated ongoing costs of living with an injury.

48. The table below, based on the Industrial Injuries Disablement Benefit and War Pension Scheme, shows the proposed levels of awards on a weekly and annualised basis (although we expect that payments will be made monthly):

Assessed level of disablement	Weekly amount	Annual amount
100%	189.80	£9,870
90%	170.82	£8,883
80%	151.84	£7,896
70%	132.86	£6,909
60%	113.88	£5,922
50%	94.90	£4,935
40%	75.92	£3,948
30%	56.94	£2,961
20%	37.96	£1,974

49. It is proposed that the payments would not affect existing income-related benefit entitlement, as the payment is intended to provide acknowledgement and additional financial support.

Question 3: Does the proposed approach to payments - including scaling awards in proportion to the severity of injury, level of awards, and adopting degrees of disablement methodology - seem fair and proportionate?	Yes	No
If you answered 'no', what changes do you think would be needed to make the proposed approach fair or proportionate?		

Question 4: Based on the examples set out, do you consider 14-20% degree of disablement to be an appropriate entry point for the ongoing support to be provided through the scheme?	Yes	No
If you answered 'no', what would you consider to be an appropriate entry point?		

Backdating ongoing payments, lump sums and passing payments to spouses, civil partners, cohabiting partners and/or registered carers

50. We propose that victims would receive these payments on a regular basis for the rest of their lives - and that their awards be backdated to the date of the Stormont House Agreement (SHA), December 2014. The SHA represents the balance of political agreement reached between the five main parties in Northern Ireland and the UK Government and the Irish Government in 2014, when it was first agreed that a scheme like this should be established. It seems right that payments should reflect the time that has passed since this scheme should have been established. Under the provisions of the Northern Ireland (Executive Formation etc.) Act 2019 these back payments would be available for applications made in at least the first two years of the scheme's operation.

Question 5: Do you agree with the proposed approach to backdating initial awards to the date of the Stormont House Agreement?	Yes	No
If you answered 'no', please tell us what backdating arrangements you would like to see in place.		

51. A key principle underpinning the victims and survivors services set out in the SHA is that victims should have choices - this is reflected, for example, in the range of services offered by different providers. When beneficiaries of this scheme reach the age of 60 or are already this age or older, we propose to make it possible to apply for a lump sum award of the equivalent of ten years' worth of payments, so that individuals at a later stage in life have greater flexibility to use the award as they judge best.
52. We intend to make this option available at the age of 60 as this is the usual age at which the Commissioner for Older Persons in Northern Ireland recognises someone as an older person. A lump sum based on ten years payments reflects the average life expectancy of those seriously physically injured in the Troubles at the age of 60³. It is proposed that as a lump sum would be a one-off payment - i.e. no further payment could be made, even if a person then lived for longer than ten years or their condition worsened, and would not pass to a spouse/ civil partner or carer.

Question 6: Do you agree with the proposed approach to providing a lump sum option?	Yes	No
If you answered 'no', what alternative approach would you prefer?		

³ Based on data provided by the Victims and Survivors Service

53. It is proposed that the primary beneficiary (i.e. the injured person) will be able to nominate an individual to receive the payment on their death for a further ten years. Payments will be able to pass to a spouse, civil partner or cohabiting partner⁴, or a registered carer (by which we mean someone registered as a carer with the Department for Communities, Department for Work and Pension, or the Victims and Survivors Service). This specific provision is proposed in recognition of the fact that many spouses, partners and/or carers made significant personal sacrifices to care for those living with serious injuries, and would benefit from additional financial support on account of this. In the case of spouses and partners, it is also intended to recognise the impact of severe trauma caused by disablement from a Troubles-related injury on a family unit. Some have argued that the transfer should be for life; other schemes make payments for shorter periods, or at reduced rates. We consider this provision at full rate for ten years to be appropriate.

Question 7: Do you support the proposed arrangements for the payments to continue for ten years following the death of the injured person, to a nominated spouse, civil partner, cohabiting partner or registered carer?	Yes	No
If you answered 'no', what arrangements would you like to see in place to make provision for those surviving primary beneficiaries?		

⁴ By which we mean individuals living together as husband and wife or civil partners.

54. We recognise that, sadly, many who campaigned and fought for this scheme have died since the Stormont House Agreement was reached. We therefore propose to allow spouses, civil partners, cohabiting partners and carers of those who have died since the Stormont House Agreement and who would have been eligible for support through the scheme, to be entitled to receive ten year's worth of support through the scheme.
55. We also propose that carers or spouses of those who were seriously injured in a Troubles-related incident and who died in the period 2004-2014 would be able to apply to receive the outstanding balance of payments that they would have received if the scheme had been operational in 2014. For example, a spouse whose loved one died in 2012 could be eligible for 8 years' worth of payments. We recognise that it may be harder to provide evidence to support such a claim, but consider it fairest to allow people to seek to make such claims as it may be possible for them to substantiate them.

Question 8: Do you support the proposed arrangements for allowing applications from surviving spouses/carers who would have been provided for if the scheme had been established in 2014?	Yes	No
If you answered 'no', please tell us what different arrangements you would like to see in place.		

Eligibility for the scheme

56. The scheme is intended to support those individuals living with permanent disablement caused by serious injury in Troubles-related incidents. By Troubles-related incident we mean an incident involving an act of violence or force for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there (as defined by the Northern Ireland (Executive Formation etc.) Act 2019).
57. In line with usual public policy, we intend to make awards both to primary victims (someone directly involved in the incident) and secondary victims (someone who has witnessed the distressing events) in certain, limited circumstances. Secondary victims will need to demonstrate close proximity of relationship between them and a primary victim, to have been physically present at the incident at the time or in its immediate aftermath, and have sustained a diagnosable psychiatric injury by shock caused by direct perception.
58. A commonly used time period for the Troubles is to consider that they began in 1966 and ended with the signing of the Belfast/Good Friday Agreement on 10 April 1998. It may be that this provides the basis for setting the time limits for the scheme. But as with many aspects of this scheme, the time period that it would cover is clearly an issue that will need to be considered very carefully. Any time period selected will create parameters by which some victims will be excluded. This is why we have included the time period as a specific question in this consultation and want to receive your views.

Question 9: Should the suggested time frame be those injured 1 January 1966-10 April 1998?	Yes	No
If you answered 'no', what alternative dates would you propose to determine eligibility		

59. The UK Government has been clear that it could not justify making these payments to terrorists convicted of playing a role in orchestrating the incident in which they were injured. We therefore do not intend to make payments to individuals with a criminal conviction directly related to the incident in which they sustained their injury.

Question 10: Do you agree with the proposed approach to who will benefit from the scheme?	Yes	No
If you answered 'no', please tell us what alternative approach you would like to see to ensure terrorists injured by their own hand do not benefit from the scheme.		

60. We propose that the scheme be open to victims of the Troubles injured in the UK and ordinarily resident in the UK now or at the time of the injury. This recognises that many people were injured in Troubles violence in Great Britain as well as Northern Ireland, and their harm must be recognised. Other states have a duty to provide for their citizens - for example, the Government of Ireland had a Remembrance Commission which provided financial assistance to those injured in the Troubles, and we consider it appropriate to target limited financial resources to meet the needs of those with a close connection to the Troubles.

Question 11: Do you agree with the proposed approach based on residency and location of incidents?	Yes	No
<p>If you answered 'no', what approach would you like to see taken to location of incident and residency in determining eligibility?</p>		

Handling claims, previous compensation and disagreeing with decisions

61. In order to ensure that awards are made fairly and to allow effective decision making about eligibility on the balance of probabilities, it will be necessary to collect documentary evidence to underpin awards. An appropriate standard of proof will be necessary to support such significant financial awards and so we intend to seek contemporary evidence of involvement in the incident from appropriate sources.
62. It is proposed that the scheme will ask applicants to confirm the Troubles-related incident or incidents in which they were injured and seek their permission to verify this with the Police. We recognise that some individuals may not have reported an incident to the Police for fear of reprisals, or other reasons. We therefore propose that if police records are not available, contemporaneous medical records may provide verification.
63. The scheme would then review evidence of an applicant's degree of disablement and if he or she met the criteria for an award, begin to make payments. Where evidence is partial, the scheme will help to contact GPs, hospitals and other healthcare professionals to see what further additional evidence may be collated.

64. If, after this stage, there is still insufficient evidence on which to base a decision, the applicant would be provided with the option of a medical assessment. We recognise that many potential applicants will not welcome the prospect of such an assessment. This is why we would only have recourse to this stage having exhausted the possibility of making reliable determinations based on paper evidence (including sourcing evidence previously provided to other organisations such as the Victims and Survivors Service). Where a face-to-face assessment is necessary, we will ensure that those carrying out the assessments are well trained in trauma, the needs of victims and survivors, and the values and ethos of the scheme. Victims and survivors will also have the opportunity to feedback to the scheme’s administrators at various points to ensure it is continuously adjusted to best meet need.

Question 12: Do you agree with the proposed approach to evidence and assessment?	Yes	No
<p>If you answered ‘no’, please tell us how you would amend this approach or an alternative approach you would like to see taken.</p>		

65. We will also request information about previous compensation made in respect of an injury, as it will be necessary to adjust awards where public sector compensation has been previously given. We acknowledge that historic compensation for Troubles-related injuries has not always been considered satisfactory and we do not wish to undermine the intent to provide acknowledgement and support. However, we consider that it might be unfair for the scheme to provide awards to those who received previous compensation relating to the same incident, on exactly the same basis as those who did not. We therefore propose to adjust awards to take into account previous compensation over a certain threshold.

66. Similarly, where continuing payments are being made, such as an injured on duty award or regular payments through the War Pension

Scheme, these should also be taken into consideration. Court awarded damages would also be adjusted for.

67. It is proposed that direct award payments (self-directed assistance payments and / or additional needs payments) through the Victims and Survivors Service would cease for individuals given an award through this scheme, as the amount provided through this scheme would always be greater. However, needs-based support and services would continue to be available.

Question 13: Do you agree with the proposed approach of taking account of other compensation/payments?	Yes	No
<p>If you answered 'no', please tell us what approach you would like to see taken to other compensation/payments received.</p>		

68. If applicants are not content with the outcome of the decision about their application, they would have the opportunity to request an internal reconsideration of a decision within 12 months of being notified. This reconsideration would be handled by a different team or staff member from the person who originally dealt with the application. If the applicant is not satisfied with the outcome of this reconsideration process, they would have the ability to appeal to an independent body other than the Courts within 12 months of being notified of the outcome of this process.
69. In cases where an individual considers that their condition has significantly deteriorated since they applied to the scheme (either successfully or unsuccessfully), they would be able to request a medical reopening - an opportunity for them to provide evidence for why they believe their award should be increased due to significant worsening of their Troubles-related injury for which they receive an award.

Question 14: Do you agree with the proposed approach to disagreeing with or reviewing decisions?	Yes	No
<p>If you answered 'no', what process do you think should be used to deal with disagreements or reviews?</p>		

Support

70. This scheme will only be able to help those living with permanent disablement caused by serious injury in Troubles-related incidents. We will work hard to ensure that it is clear who this scheme is likely to benefit, to try and avoid too many individuals applying and being disappointed by not being successful. But it is almost inevitable that some will apply and not be successful in securing an award.
71. The scheme will work with victim support groups to ensure that appropriate support is available to applicants, to inform their decision-making about whether to apply and to provide support during the application process. We will also make arrangements to give additional help to those who require assistance completing forms and making claims, and/or those lacking mental capacity to make decisions relevant to this scheme.
72. Where we identify a need that has not been met through statutory services, such as a need for psychological therapies, we will offer appropriate referrals and seek to help victims as much as we reasonably can. We will also make provision for financial guidance to be available, given the large sums potentially involved for some applicants.

Question 15: Do you support the proposed support arrangements?	Yes	No
<p>If you answered ‘no’, please tell us what additional or alternative support arrangements you would like to see in place.</p>		

73. The UK Government will be required under the provisions of the 2019 Executive Formation etc. Act to bring forward regulations to establish this scheme in 2020 if an Executive is not restored by 21 October 2019; we will carefully consider feedback to this consultation in finalising Regulations for the scheme, in order to be ready for this possibility. It is our priority that an Executive be restored, and in any scenario we are hopeful that the findings of this consultation will support a new Executive taking forward such a scheme in a timely manner.
74. The Stormont House Agreement provided for further work to be undertaken in establishing a “pension” scheme for those most seriously injured in the Troubles. Too much time has already passed since then. It is imperative that progress is made now on delivering this scheme, to support those seriously injured in the Troubles and provide a measure of additional financial support to them.

Question 16: Have you any other comments you wish to make about the proposed approach to the scheme?

Further comments:

SECTION 3 - SUPPLEMENTARY INFORMATION

Annex A: Consultation questions

Name	
Address	
Email (if applicable)	
<p>Are you responding as an individual or representing the views of an organisation? If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.</p>	
Details of organisation (if applicable)	

Question 1: Do you agree with the proposed purpose of the scheme?	Yes	No
<p>If you answered 'no', what would you change or what do you think the purpose of the scheme should be?</p>		

Question 2: Do you agree with the underpinning principles set out above?	Yes	No
<p>If you answered 'no', what principles do you think should be removed, added or amended?</p>		

Question 3: Does the proposed approach to payments - including scaling awards in proportion to the severity of injury, level of awards, and adopting degrees of disablement methodology - seem fair and appropriate?	Yes	No
<p>If you answered 'no', what changes do you think would be needed to make the proposed approach fair or proportionate?</p>		

Question 4: Based on the examples set out, do you consider 14-20% degree of disablement to be an appropriate entry point for the ongoing support to be provided through the scheme?	Yes	No
<p>If you answered 'no', what would you consider to be an appropriate entry point?</p>		

Question 5: Do you agree with the proposed approach to backdating initial awards to the date of the Stormont House Agreement?	Yes	No
<p>If you answered 'no', please tell us what backdating arrangements you would like to see in place.</p>		

Question 6: Do you agree with the proposed approach to providing a lump sum option?	Yes	No
<p>If you answered 'no', what alternative approach would you prefer?</p>		

Question 7: Do you support the arrangements for the payments to continue, for ten years following the death of the injured person, to a nominated spouse, civil partner, cohabiting partner or registered carer?	Yes	No
<p>If you answered 'no', what arrangements would you like to see in place to make provision for those surviving primary beneficiaries?</p>		

Question 8: Do you agree that we should allow applications from surviving spouses/carers who would have been provided for if the scheme had been established in 2014?	Yes	No
<p>If you answered 'no', please tell us what different arrangements you would like to see in place.</p>		

Question 9: Should the suggested time frame be those injured 1 January 1966-10 April 1998?	Yes	No
<p>If you answered 'no', what alternative dates would you propose to determine eligibility?</p>		

Question 10: Do you agree with the proposed approach to who will benefit from the scheme?	Yes	No
<p>If you answered 'no', please tell us what alternative approach you would like to see to ensure terrorists injured by their own hand do not benefit from the scheme.</p>		

Question 11: Do you agree with the proposed approach based on residency and location of incidents?	Yes	No
<p>If you answered 'no', what approach would you like to see taken to location of incident and residency in determining eligibility?</p>		

Question 12: Do you agree with the proposed approach to evidence and assessment?

Yes

No

If you answered 'no', please tell us how you would amend this approach or an alternative approach you would like to see taken.

Question 13: Do you agree with the proposed approach of taking account of other compensation/payments?

Yes

No

If you answered 'no', please tell us what approach you would like to see taken to other compensation/payments received.

Question 14: Do you agree with the proposed approach to disagreeing with or reviewing decisions?	Yes	No
<p>If you answered 'no', what process do you think should be used to deal with disagreements or reviews?</p>		

Question 15: Do you support the proposed support arrangements?	Yes	No
<p>If you answered 'no', please tell us what additional or alternative support arrangements you would like to see in place.</p>		

Question 16: Have you any other comments you wish to make about the proposed approach to the scheme?

Further comments:

Annex B: Extract from the Northern Ireland (Executive Formation etc.) Act 2019- Section 10 provisions

10 Victims' payments

(1) The Secretary of State must by regulations establish a scheme under the law of Northern Ireland which provides for one or more payments to be made to, or in respect of, a person who has sustained an injury as a result of a Troubles-related incident.

(2) The first regulations under subsection (1) must be made before the end of January 2020 and come into force before the end of May 2020.

(3) Regulations under subsection (1) must make provision as to the eligibility criteria for payments under the scheme which may, in particular, relate to—

- (a) the nature or extent of a person's injury;
- (b) how, when or where the injury was sustained;
- (c) residence or nationality;
- (d) whether or not a person has been convicted of an offence.

(4) Regulations under subsection (1) may make provision for the reimbursement of costs incurred by a person in connection with an application under the scheme (whether or not the application is successful).

(5) Regulations under subsection (1) may, in particular, make provision—

- (a) for determining the amount of any payment;
- (b) for payments to be made in respect of past periods (including periods before this Act was passed);
- (c) for payments to be reduced or repaid (in whole or in part) in specified circumstances;
- (d) about the treatment under other legislation (for example social security legislation) of payments under the scheme.

(6) Regulations under subsection (1) must make provision of the kind mentioned in subsection (5)(b) so as to ensure that where—

- (a) a person is eligible under the scheme as the result of an injury sustained by that person before the scheme comes into force, and
- (b) the person makes an application within a period specified in the regulations (which must not be less than the period of two years beginning with the day on which the scheme comes into force),

the person is entitled to a payment to reflect the amount that the person would have received had the scheme been in force since the making of the Stormont House Agreement.

(7) Regulations under subsection (1) may, in particular, make provision about—

- (a) the administration of the scheme (including provision establishing a body or conferring functions on an existing body);
- (b) the funding of the scheme by money from the Consolidated Fund of Northern Ireland (whether by virtue of grant funding from a Northern Ireland department, the appropriation of money by an Act of the Northern Ireland Assembly or otherwise);
- (c) the sharing of information between public authorities for the purposes of the scheme;
- (d) evidential matters;
- (e) the procedure for the making and deciding of applications (including provision imposing time limits);
- (f) appeals and reviews;
- (g) information, advice or assistance in relation to the scheme or payments under it.

(8) Regulations under subsection (1) may make provision conferring a discretion on a person.

(9) Regulations under subsection (1)—

(a) may include provision amending, repealing or revoking any provision made by an Act of Parliament or Northern Ireland legislation, and

(b) in so far as made in reliance on section 11(2), may also include provision amending or repealing provision made by an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.

(10) In making the first regulations under this section the Secretary of State must have regard to any advice given by the Commission for Victims and Survivors for Northern Ireland.

(11) In this section—

“injury” means any illness or injury (whether physical or mental);

“the Stormont House Agreement” means the agreement made between parties represented in the Northern Ireland Assembly, the Government of the United Kingdom and the Government of Ireland on 23 December 2014;

“Troubles-related incident” means 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.

Annex C: Equality Impact Assessment

The Northern Ireland Office has conducted an initial equality impact assessment of this proposal, which will be updated when proposals are finalised. We would welcome comments from all those with expertise and interest in this policy to inform our final thinking. The assessment is available from the NIO's website or please contact the consultation team to request a hard copy.