

# THE WINDRUSH COMPENSATION SCHEME<sup>1</sup>

## Table of Contents

<b>PART 1: INTRODUCTION</b> .....	<b>4</b>
Background – paragraphs 1.1 to 1.2.....	4
Basis of Scheme – paragraph 1.3.....	4
Definitions – paragraph 1.4 and Annex A .....	4
Dates for making claims – paragraphs 1.5 to 1.8.....	5
Governance – paragraphs 1.9 to 1.11 .....	5
<b>PART 2: ELIGIBILITY</b> .....	<b>6</b>
Primary claimants – paragraph 2.1 .....	6
Estates – paragraphs 2.2 to 2.4.....	7
Close family members – paragraphs 2.5 to 2.10.....	7
Minors – paragraph 2.11 .....	8
Claimants who lack mental capacity – paragraph 2.12 .....	8
Death of primary claimant or close family member claimant before claim determined – paragraph 2.13.....	9
Recording assessment of eligibility – paragraph 2.14 .....	9
<b>PART 3: REDRESS</b> .....	<b>9</b>
Apology – paragraph 3.1 .....	9
Types of compensation award – paragraphs 3.2 to 3.9 .....	9
Claims that relate to: 1. Government Departments and Agencies other than the Home Office, and 2. the NHS – paragraphs 3.10 to 3.12 .....	10
Basis of entitlement – paragraphs 3.13 to 3.15.....	10
<b>PART 4: GROUNDS FOR REDUCING OR DECLINING TO MAKE AN AWARD</b> .....	<b>11</b>
Double recovery – paragraphs 4.1 to 4.3.....	11
Mitigation of loss – paragraph 4.4.....	12

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Criminality – paragraphs 4.5 to 4.6 .....	12
Fraud – paragraphs 4.7 to 4.9 .....	12
Recording a decision to reduce or to decline to make an award – paragraph 4.10 .....	13
<b>PART 5: REPAYMENT</b> .....	<b>13</b>
Repayment – paragraphs 5.1 to 5.3 .....	13
<b>PART 6: CLAIMS</b> .....	<b>13</b>
Making a claim – paragraphs 6.1 to 6.2 .....	13
Supporting information – paragraphs 6.3 to 6.5 .....	14
Medical and other expert evidence – paragraphs 6.6 to 6.8 .....	14
New or changed information – paragraphs 6.9 to 6.11 .....	14
Postage costs for overseas claimants – paragraph 6.12 .....	15
Withdrawal of a claim – paragraphs 6.13 to 6.15 .....	15
<b>PART 7: DETERMINATIONS</b> .....	<b>15</b>
Determinations – paragraphs 7.1 to 7.10 .....	15
<b>PART 8: AWARD AND PAYMENT</b> .....	<b>16</b>
Award and payment – paragraphs 8.1 to 8.6 .....	16
<b>PART 9: CONDITIONS OF PAYMENT</b> .....	<b>17</b>
Interim payment – paragraph 9.1 .....	17
Final payment – paragraph 9.2 .....	17
Liability – paragraph 9.3 .....	17
<b>PART 10: REVIEW</b> .....	<b>17</b>
Request – paragraphs 10.1 to 10.6 .....	17
Tier 1 Review decision – paragraphs 10.7 to 10.12 .....	18
Tier 2 Review decision – paragraphs 10.13 to 10.20 .....	19
Application of Parts 6 and 7 to Reviews – paragraph 10.21 .....	20
Withdrawal of a request for a review – paragraphs 10.22 to 10.25 .....	20
<b>Annex A Definition of Commonwealth Citizen</b> .....	<b>21</b>
<b>Annex B Immigration Fees and Legal Costs</b> .....	<b>22</b>

<b>Annex C</b>	<b>Detention, Deportation, Removal and Return .....</b>	<b>25</b>
<b>Annex D</b>	<b>Loss of Access to Employment .....</b>	<b>28</b>
<b>Annex E</b>	<b>Loss of Access to Child Benefit, Child Tax Credit or Working Tax Credit..</b>	<b>32</b>
<b>Annex F</b>	<b>Denial of Access to Services.....</b>	<b>36</b>
<b>Annex G</b>	<b>Homelessness .....</b>	<b>40</b>
<b>Annex H</b>	<b>Impact on Life .....</b>	<b>42</b>
<b>Annex I</b>	<b>Discretionary Award.....</b>	<b>46</b>

## **1. PART 1: INTRODUCTION**

### **Background**

- 1.1 This compensation scheme (“the Scheme”) is designed to compensate individuals who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom. Those most affected are often referred to as the “Windrush generation”. This name refers to the “Empire Windrush”, one of the first ships that brought workers from Caribbean islands to the United Kingdom in 1948, in response to labour shortages following the Second World War. The Scheme is not limited by reference to those connected to that ship or those with a family connection to the Caribbean. For those most affected, their lawful right to stay in the United Kingdom stems from arriving and settling in the United Kingdom, mainly but not exclusively from Commonwealth countries, before 1 January 1973. In these cases, the right to stay in the United Kingdom derives directly from the Immigration Act 1971 without the need for any documentation. However, the Scheme is open to any eligible person who arrived in the United Kingdom before 1988 from any country who is lawfully in the United Kingdom. In certain cases, individuals based overseas may also be able to claim. The Scheme is also open to close family members of those groups.
- 1.2 There is no single or consistent picture of the loss suffered by those affected. The Scheme has been designed to address potential losses under a range of categories and to take into account the impact of the losses in each case, as far as possible.

### **Basis of Scheme**

- 1.3 Compensation under the Scheme is paid voluntarily.

### **Definitions**

- 1.4 In the Scheme:

“balance of probabilities” means whether an event is more likely to have occurred than not occurred;

“Commonwealth citizen” has the definition provided in Annex A;

“continuously resident in the United Kingdom” means lawfully resident in the United Kingdom for an unbroken period except that:

- (a) continuous residence is preserved if a period of absence from the United Kingdom is 2 years or less at any one time; and

- (b) in the case of a Commonwealth citizen, any absence from the United Kingdom prior to 1 August 1988 is disregarded;

A claim is determined “fully and finally” when either:

- (a) a determination has been issued in respect of it, and that determination has been accepted in full and paid or has been withdrawn; or
- (b) the claim has been withdrawn;

“lawful status” means:

- (a) a right of abode in the United Kingdom within the meaning of the Immigration Act 1971; or
- (b) settled status,

and, except for paragraphs 2.6 and 2.7, references to being lawfully in the United Kingdom should be read accordingly;

“settled status” means indefinite leave to enter or remain in the United Kingdom within the meaning of the Immigration Act 1971 and references to being settled in the United Kingdom should be read accordingly;

“written” or “in writing” includes communication by e-mail.

### **Dates for making claims**

- 1.5 The Scheme will be open for claims to be made from 3 April 2019.
- 1.6 Any claim received on or before 2 April 2023 will be considered by the Home Office.
- 1.7 A claim received after 2 April 2023 will only be considered if:
  - (a) the Home Office is satisfied that there are exceptional circumstances for the delay in applying for compensation; and
  - (b) the claim is received on or before 2 October 2023.
- 1.8 The Home Office may extend the period of time within which claims may be made under the Scheme.

### **Governance**

- 1.9 The Home Secretary will appoint an Independent Person who will have oversight of the operation of the Scheme.
- 1.10 The Independent Person will, at such times as may be required, report to the Home Secretary on the operation of the Scheme.
- 1.11 The Secretary of State will provide quarterly updates on the operation of the Scheme to Parliament.

## 2. PART 2: ELIGIBILITY

### Primary claimants

2.1 The following persons are claimants who may claim compensation under the Scheme and they will be referred to in the Scheme as primary claimants:

- (a) a Commonwealth citizen who was settled in the United Kingdom before 1 January 1973 and has been continuously resident in the United Kingdom since their arrival (or who satisfied this provision and is now a British citizen);
- (b) a Commonwealth citizen who was settled in the United Kingdom before 1 January 1973 whose settled status has lapsed because they left the United Kingdom for a period of more than 2 years, and who is now lawfully in the United Kingdom (including as a British citizen);
- (c) a Commonwealth citizen who has a right of abode and was ordinarily resident in the United Kingdom on 1 January 1973 (or who satisfied this provision and is now a British citizen);
- (d) a child of a Commonwealth citizen who either:
  - (i) was settled in the United Kingdom before 1 January 1973; or
  - (ii) has a right of abode (or did and is now a British citizen) and was ordinarily resident in the United Kingdom on that date,

(including a citizen who satisfied one of those requirements and is now deceased), where the child was born in the United Kingdom or arrived in the United Kingdom before the age of 18 and has been continuously resident in the United Kingdom since their birth or arrival;

- (e) a grandchild of a Commonwealth citizen who either:
  - (i) was settled in the United Kingdom before 1 January 1973; or
  - (ii) has a right of abode (or did and is now a British citizen) and was ordinarily resident in the United Kingdom on that date,

(including a citizen who satisfied one of those requirements and is now deceased), where the grandchild and their parent were born in the United Kingdom or arrived in the United Kingdom before the age of 18, and the grandchild has been continuously resident in the United Kingdom since their birth or arrival;

- (f) a person of any nationality who arrived in the United Kingdom before 31 December 1988 and who either is lawfully in the United Kingdom or is now a British citizen;
- (g) a Commonwealth citizen outside the United Kingdom who was settled in the United Kingdom before 1 January 1973 and who has a right of abode or settled status or who is now a British citizen, or whose settled status has lapsed because they left the United Kingdom for a period of more than 2 years.

## **Estates**

- 2.2 The estate of a primary claimant is eligible to claim compensation under the Scheme.
- 2.3 A claim on behalf of an estate must be made:
- (a) where the estate is administered in the United Kingdom, by an executor or an administrator of the estate or by a personal representative of the deceased;
  - (b) where the estate is not administered in the United Kingdom, by a person who has responsibility for the administration of that estate.
- 2.4 For the purposes of paragraph 2.3, “personal representative” has the meaning given in section 55(1)(xi) of the Administration of Estates Act 1925.

## **Close family members**

- 2.5 Subject to paragraphs 2.6 and 2.7, a close family member of a primary claimant (including a primary claimant who is deceased or who has not brought a claim under the Scheme) is eligible to claim compensation under the following provisions of the Scheme only:
- (a) paragraph 3.2 and Annex B (fees and costs);
  - (b) paragraph 3.8 and Annex H (impact on life); and
  - (c) paragraph 3.9 and Annex I (discretionary award).
- 2.6 A close family member of a primary claimant is eligible to claim compensation under paragraph 3.8 and Annex H (impact on life) and under paragraph 3.9 and Annex I (discretionary award) only if the impact, loss or detriment in respect of which the compensation is claimed, occurred or was triggered when the close family member was lawfully in the United Kingdom within the meaning of paragraph 2.9.
- 2.7 A close family member who is in the United Kingdom at the time of making the claim must be lawfully in the United Kingdom within the meaning of paragraph 2.9.
- 2.8 For the purposes of paragraph 2.5, a person is a close family member of a primary claimant if the person was at the material time:
- (a) the claimant’s spouse or civil partner and living with the claimant;

- (b) the claimant's partner (living with the claimant, unmarried and not in a civil partnership, as husband and wife or as civil partners, for a continuous period which lasted in total for 2 years or more);
- (c) the claimant's child;
- (d) the claimant's parent;
- (e) the claimant's sibling.

2.9 For the purposes of paragraphs 2.6 and 2.7, "lawfully in the United Kingdom" means a person:

- (a) has a right of abode in the United Kingdom within the meaning of the Immigration Act 1971;
- (b) has settled status within the meaning of paragraph 1.4; or
- (c) has limited leave to remain but is on a route to settlement within the meaning of the Immigration Rules<sup>2</sup>

2.10 For the purposes of paragraph 2.8:

- (a) the "material time" is the period of time when the loss or detriment in respect of which the close family member is claiming compensation under the Scheme, occurred or was triggered; and
- (b) a sibling is a brother or sister of the full-blood or the half-blood.

## **Minors**

2.11 If the claimant is under the age of 18 on the date their claim is made, the claim must be made on behalf of the claimant by a person who has parental responsibility for them.

## **Claimants who lack mental capacity**

2.12 If the claimant lacks mental capacity on the date their claim is made, the claim must be made:

- (a) if the claimant is in the United Kingdom, by a person exercising power of attorney over the claimant's financial affairs or by a deputy, guardian or controller with power over the claimant's financial affairs;
- (b) if the claimant is outside the United Kingdom, by a person exercising corresponding powers.

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<sup>2</sup>The Immigration Rules means the rules for the time being laid down as mentioned in section 3(2) of the Immigration Act 1971. Details of the Immigration Rules can be found on Gov.UK: <https://www.gov.uk/guidance/immigration-rules>

### **Death of primary claimant or close family member claimant before claim determined**

2.13 Where a claimant dies before their claim is fully and finally determined the Home Office will continue to process the claim and any compensation payable will be paid to the deceased claimant's estate.

### **Recording assessment of eligibility**

2.14 Where the Home Office rejects a claim on the grounds of eligibility, it will record that outcome in a determination (see Part 7).

## **3. PART 3: REDRESS**

### **Apology**

3.1 Where a primary claimant, estate or a close family member receives an award of compensation under the Scheme, the determination that makes that award will be accompanied by an apology by the Home Office, acknowledging what has happened to the primary claimant or close family member or (in the case of an estate) the deceased, and acknowledging any role that the Home Office may have played in the impact or loss suffered.

### **Types of compensation award**

3.2 An award in respect of certain immigration fees and legal fees may be made to a primary claimant, an estate or a close family member in accordance with the provision made in Annex B of the Scheme.

3.3 An award in respect of detention, deportation, removal or return may be made to a primary claimant or an estate in accordance with the provision made in Annex C of the Scheme.

3.4 An award in respect of loss of access to employment may be made to a primary claimant or an estate in accordance with the provision made in Annex D of the Scheme.

3.5 An award in respect of loss of access to child benefit, child tax credit or working tax credit may be made to a primary claimant or an estate in accordance with the provision made in Annex E of the Scheme.

3.6 An award in respect of the denial of access to services (a denial of access to housing services, a denial of access to free NHS care, reimbursement of private medical fees, a denial of access to higher education as a home student, reimbursement of international student fees, a denial of access to banking services or reimbursement of banking fees) may be made to a primary claimant or an estate in accordance with the provision made in Annex F of the Scheme.

- 3.7 An award in respect of homelessness may be made to a primary claimant or an estate in accordance with the provision made in Annex G of the Scheme.
- 3.8 An award in respect of impact on life may be made to a primary claimant, an estate or a close family member in accordance with the provision made in Annex H of the Scheme.
- 3.9 A discretionary award may be made to a primary claimant, an estate or a close family member in accordance with the provision made in Annex I of the Scheme.

### **Claims that relate to (1) Government Departments and Agencies other than the Home Office and (2) the NHS**

- 3.10 Paragraphs 3.11 and 3.12 apply where a claim made by a primary claimant or an estate includes a request for:
- (a) reinstatement or backdated payment of a benefit payable by:
    - (i) DWP;
    - (ii) HMRC; or
  - (b) adjustment of the claimant's national insurance position administered by HMRC;
  - (c) repayment of a charge levied by an NHS body; or
  - (d) a consolatory payment from the DVLA in relation to loss of a driving licence.
- 3.11 The Home Office will notify DWP, HMRC or the NHS body concerned, or the DVLA (as appropriate). DWP, HMRC or the NHS body concerned, or the DVLA will consider any such request, in accordance with the relevant legal and administrative frameworks applicable to reinstatement or backdated payment of the benefit, adjustment of the individual's national insurance position, repayment of charges or consolatory payment (as the case may be).
- 3.12 Any payment or adjustment made as a result of a request considered under the arrangement set out in paragraph 3.11 will not form part of the compensation payable under the Scheme.

### **Basis of entitlement**

- 3.13 In determining claims under the Scheme, due regard will be had to the Caseworker Guidance as amended from time to time<sup>3</sup>.
- 3.14 Where an award under any of the Annexes provides for less than the actual losses suffered, no additional award will be made under any of the other Annexes to meet any difference between that award and the actual losses suffered.

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<sup>3</sup> The Case Worker Guidance is available at [www.gov.uk/windrush-compensation](http://www.gov.uk/windrush-compensation). A hard copy can be obtained from the Windrush Helpline: +44 (0)800 678 1925 (Monday to Friday, 9am to 5pm).

3.15 An award under the Scheme, including an award under Annex I, will not be made in respect of:

- (a) immigration fees and legal costs incurred save where provided for in Annex B;
- (b) costs incurred or losses arising from detention, deportation, removal or return save where provided for in Annex C;
- (c) employment-related losses or lost employment benefits associated with the termination of a contract of employment or contract for services, or the withdrawal of an offer of employment or the offer of a contract for services, save where provided for in Annex D;
- (d) impacts or losses relating to occupational pension schemes or other pension-related matters or entitlements;
- (e) loss of access to services save where provided for in Annex F;
- (f) costs incurred or losses arising from homelessness save where provided for in Annex G;
- (g) non-financial losses or detriment associated with the types of impacts specified in Annex H, save to the extent provided for in that Annex; or
- (h) loss of opportunity to invest money for the purpose of profit or income generation, or other potential losses which are of an essentially speculative nature.

#### **4. PART 4: GROUNDS FOR REDUCING OR DECLINING TO MAKE AN AWARD**

##### **Double recovery**

4.1 A claimant shall not be entitled to an award representing payment more than once for the same impact, loss, damage, detriment or other circumstance, and the Home Office may reduce or decline to make an award under the Scheme in so far as it compensates for or it relates to an impact, loss, damage, detriment or other circumstance that has previously been the subject of compensation or payment under or outside the Scheme.

4.2 For the purposes of paragraph 4.1:

- (a) a claimant has been compensated or paid under the Scheme in respect of impact, loss, damage, detriment or other circumstance if they have been granted an award in respect of that impact, loss, damage, detriment or circumstance under the Scheme;
- (b) a primary claimant or an estate has been compensated under the Scheme in respect of a loss under paragraph 3.2 and Annex B (fees and costs) if a close

family member has, with the written consent of the primary claimant or estate, applied for and subsequently been granted an award in respect of that loss.

- 4.3 For the purposes of paragraph 4.1 a claimant has been compensated outside the Scheme in respect of an impact, loss, damage, detriment or other circumstance if:
- (a) they have been granted a payment in respect of that impact, loss, damage, detriment or circumstance by way of compensation, damages, benefits or any other payment by any person or estate; or
  - (b) they have received an exceptional payment from the Home Office under the Windrush Scheme: Support in Urgent and Exceptional Circumstances Policy<sup>4</sup>.

### **Mitigation of loss**

- 4.4 The Home Office may reduce or decline to make an award under the Scheme if it considers:
- (a) a primary claimant or (in the case of an estate) the deceased has failed to take reasonable steps to resolve their lawful status;
  - (b) a primary claimant, deceased or close family member has otherwise failed to take reasonable steps to mitigate losses or impacts;
  - (c) a primary claimant, deceased or close family member has taken unreasonable steps that have resulted in increased losses; or
  - (d) there has been wilful default or lack of co-operation on the part of a primary claimant or deceased when attempting to resolve their lawful status.

### **Criminality**

- 4.5 The Home Office may reduce or decline to make an award to a claimant who has been convicted of an offence in respect of which they received a sentence of imprisonment of 4 years or more and their offending was of such a nature that it makes it inappropriate to make an award in whole or part.
- 4.6 Paragraph 4.5 does not apply in relation to a conviction and sentence under the law of a country outside the United Kingdom for conduct which on the date of conviction did not constitute a criminal offence under the law of any part of the United Kingdom.

### **Fraud**

- 4.7 The Home Office will normally decline to make an award under the Scheme if it is satisfied that the claimant has, in any part of their claim, dishonestly made a false

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<sup>4</sup> Available at <https://www.gov.uk/government/publications/windrush-scheme-support-in-urgent-and-exceptional-circumstances>

representation or dishonestly withheld information with the intention of obtaining compensation to which they would not otherwise be entitled.

4.8 The Home Office may grant an award under the Scheme, in whole or in part, to a claimant referred to in paragraph 4.7 if it is satisfied that it would be unjust not to do so.

4.9 If the Home Office, in the course of administering the Scheme, considers that an offence may have been committed by a claimant or any other person, it must notify the police.

#### **Recording a decision to reduce or decline to make an award**

4.10 A decision to reduce or decline to make an award under Part 4 of the Scheme will be recorded in a determination (see Part 7).

### **5. PART 5: REPAYMENT**

5.1 If the Home Office receives evidence after payment of an award that:

- (a) the claimant made a false representation or withheld information and as a result obtained compensation to which they would not otherwise be entitled; or
- (b) the claimant has received a payment from another source which should have been taken into account in accordance with paragraph 4.1,

it may give written notice of intention to recover the award or part of it to the claimant.

5.2 The claimant may make representations within 28 days of the notice being given under paragraph 5.1.

5.3 After considering the evidence and any representations made, the Home Office will either:

- (a) confirm any determination in force; or
- (b) issue a repayment demand (which requires repayment in whole or in part of the award paid under the determination in force),

and will give written notice of that decision to the claimant.

### **6. PART 6: CLAIMS**

#### **Making a claim**

6.1 A claim for an award shall be made to the Home Office and will be determined in accordance with the Scheme.

6.2 A claim must be in the form provided by the Home Office and may be submitted:

- (a) by e-mail to - [WindrushCompensationScheme@homeoffice.gov.uk](mailto:WindrushCompensationScheme@homeoffice.gov.uk);

- (b) by post from within the United Kingdom to - Freepost Windrush Compensation Scheme; or
- (c) by post from overseas to - PO Box 3468, Sheffield S3 8WA, United Kingdom.

### **Supporting information**

- 6.3 The Home Office will require supporting evidence to enable it to determine a claimant's entitlement to compensation under the Scheme.
- 6.4 The Home Office may:
  - (a) request further information or evidence from the claimant; and
  - (b) obtain further information or evidence from other government departments, public authorities or others with particular expertise (including but not limited to medical or financial experts).
- 6.5 The claimant should:
  - (a) provide further information or evidence as reasonably required; and
  - (b) cooperate with the Home Office, public authorities, and those from whom further information or evidence is sought under paragraph 6(4)(b) as far as is reasonably practicable.

### **Medical and other expert evidence**

- 6.6 Where the Home Office considers that medical or other expert evidence is required, taking into account any request or representations from a claimant to obtain medical or other expert evidence, they may commission a report from a suitably qualified practitioner with the claimant's consent at Home Office expense.
- 6.7 The claimant should cooperate with reasonable arrangements for obtaining such a report.
- 6.8 Reasonable travel costs will be met by the Home Office.

### **New or changed information**

- 6.9 The claimant may submit further information in support of their claim at any time before it is determined and should submit any such information as soon as it becomes available to them.
- 6.10 The claimant must inform the Home Office of any change of address or other contact details from those given on the claim form as soon as is reasonably practicable.
- 6.11 The claimant must inform the Home Office of the progress of any other claim (including a claim brought by another person of which the claimant is aware) or proceedings in which compensation is sought in respect of the losses for which the claimant is seeking compensation under the Scheme.

### **Postage costs for overseas claimants**

6.12 A claimant living outside of the United Kingdom, who accepts a determination, may seek from the Home Office reimbursement of reasonable postage costs incurred in posting their claim where the cost of postage is not fully covered by the Home Office FREEPOST arrangements.

### **Withdrawal of a claim**

6.13 The claimant may, in writing, withdraw a claim, or any part of a claim, at any time.

6.14 Any determination in force when a claim is withdrawn will be withdrawn and, where only part of a claim is withdrawn, any determination in respect of that part of the claim will be withdrawn.

6.15 If the claimant has already received an interim payment in respect of their claim or part of their claim when it is withdrawn, that payment will be repayable to the Home Office.

## **7. PART 7: DETERMINATIONS**

7.1 The Home Office will notify the claimant in writing of the determination of the claim.

7.2 If the Home Office has determined part of the claim, it may notify the claimant in writing and issue an interim decision in respect of that part of the claim.

7.3 The determination will contain:

- (a) details of the award;
- (b) details of any payments made under the Windrush Scheme: Support in Urgent and Exceptional Circumstances Policy;
- (c) any interim decisions and payments made; and
- (d) any record made under paragraph 2.14 or 4.10.

7.4 The determination will be accompanied by a list of any payments to date from other government departments to whom the Home Office has referred a request made by a claimant under paragraphs 3.10 and 3.11.

7.5 If the claimant wishes to accept the determination the claimant must notify the Home Office within 2 months of the date of the issue of the determination so that payment can be made.

7.6 If the claimant wishes to seek a review of the determination, the claimant must request a review from the Home Office within 2 months of the date of the issue of the determination.

7.7 The Home Office may extend the period in paragraph 7.5 or 7.6 if it is satisfied that there are reasonable grounds for the delay.

- 7.8 If new information is brought to, or comes to, the attention of the Home Office in relation to a determination that has been made but not yet accepted, which, if known, would have affected whether an award was made or the amount of the award, the Home Office may reconsider the determination and replace the existing determination with a revised determination.
- 7.9 If, after 2 months from notification of the determination under paragraph 7.1, the claimant has not accepted, or notified the Home Office that they would like to seek a review of, the determination or sought to extend the 2-month deadline, the Home Office may withdraw the determination and shall notify the claimant in writing that the determination is withdrawn.
- 7.10 If the Claimant has already received an interim payment in respect of their claim when the determination is withdrawn under paragraph 7.9, that payment will be repayable to the Home Office.

## **8. PART 8: AWARD AND PAYMENT**

- 8.1 Subject to paragraph 8.2 an award will normally be paid in a lump sum.
- 8.2 Where the Home Office has made an interim decision under paragraph 7.2 that an award is payable under one or more of the Annexes to this compensation scheme, the Home Office may make an interim payment in respect of that award.
- 8.3 The making of an interim payment is without prejudice to the remainder of the claim and does not itself suggest that a further payment will be made when the award is fully determined.
- 8.4 Entitlement to an award arises on:
- (a) the date on which the Home Office receives written notice of acceptance of the determination in full; or
  - (b) in the case of a review under Part 10, the date on which the Home Office receives written notice of acceptance in full of the determination issued with a Tier 1 or Tier 2 review decision.
- 8.5 Entitlement to an interim payment arises on the date on which the Home Office receives written notice of acceptance of the interim payment as full and final settlement of that part of the claim in respect of which the interim payment is being made.
- 8.6 The Home Office will notify the claimant in writing when it has paid an award or made an interim payment.

## **9. PART 9: CONDITIONS OF PAYMENT**

### **Interim payment**

9.1 If a claimant accepts an interim payment, they accept it as full and final settlement of that part of the claim to which it relates.

### **Final payment**

9.2 If a claimant accepts an award, they accept it as full and final settlement of their claim and of any claim which they may have been entitled to bring under the Scheme.

### **Liability**

9.3 Payment of compensation under the Scheme does not reflect an acceptance on the part of the Home Office of any legal liability for the losses in respect of which the compensation is being paid.

## **10. PART 10: REVIEW**

### **Request**

10.1 A claimant may seek a review of a determination or a revised determination issued under Part 6 of the Scheme.

10.2 Subject to paragraph 10.3, a request for a review can challenge any aspect of the determination, including:

- (a) a decision under Part 2 that the claimant is not eligible under the Scheme;
- (b) a decision under Part 4 to reduce or decline to make an award on the grounds of double recovery, failure to mitigate, criminality or fraud; and
- (c) the amount of an award in a determination.

10.3 A request for a review cannot challenge:

- (a) the manner in which an award or payment is to be made under Part 8;
- (b) any payment made (or refusal to make a payment) by another government department;
- (c) a determination issued under Part 10 (review), except by way of progressing to a Tier 2 review under paragraph 10.11;
- (d) a determination that has been withdrawn under paragraph 7.9;
- (e) an exceptional payment under the Windrush Scheme: Support in Urgent and Exceptional Circumstances Policy; or
- (f) the repayment of a determination pursuant to a repayment demand under paragraph 5.3.

- 10.4 Subject to an extension being granted under paragraph 7.7, a request for a review shall be made to the Home Office and must be received by the Home Office within 2 months of the date of the issue of the determination to which the request relates.
- 10.5 A request for a review must be in the form provided by the Home Office and may be submitted:
- (a) by e-mail to - [WindrushCompensationScheme@homeoffice.gov.uk](mailto:WindrushCompensationScheme@homeoffice.gov.uk);
  - (b) by post from within the United Kingdom to - Freepost Windrush Compensation Scheme; or
  - (c) by post from overseas to - PO Box 3468, Sheffield S3 8WA, United Kingdom.
- 10.6 The claimant may submit further information in support of their request at any time before a Tier 1 or, when pending, a Tier 2 review decision is made and should submit any such information as soon as it becomes available to them but no such information can be submitted if it should reasonably have been submitted for the purposes of the initial claim under Part 6 and was not.

### **Tier 1 review decision**

- 10.7 A request for a review will be determined in the first instance (Tier 1) by a senior reviewer who was not involved in taking the decision to which the claim relates.
- 10.8 Where the senior reviewer disagrees with a decision made by the original decision-maker to:
- (a) reject a claim (in whole or in part) under Part 2 on the grounds of eligibility; or
  - (b) reduce or decline to make an award under Part 4 on the grounds of criminality or fraud,
- the senior reviewer must remit the case back to the Home Office for redetermination of the claim and will not consider any other ground of review.
- 10.9 In any other case, the senior reviewer may make any decision that was open to the original decision-maker and in particular may:
- (a) uphold a determination or revised determination that is in force;
  - (b) reinstate an initial determination that has since been revised; or
  - (c) make a new determination,
- and may make any other consequential provision required.
- 10.10 The senior reviewer will notify the claimant in writing of the Tier 1 review decision, including any decision to remit the claim under paragraph 10.8, and include the determination that is in force.

10.11 Where the claimant has been notified of a Tier 1 review decision and determination under paragraph 10.10, the claimant must, within 2 months of receipt of that notification, notify the Home Office in writing whether they wish to accept the determination or request to proceed to a Tier 2 Review.

10.12 The Home Office may extend the period in paragraph 10.11 if satisfied that there are reasonable grounds for the delay.

## **Tier 2 review decision**

10.13 A request for a review will be considered in the second instance (Tier 2) by an independent person.

10.14 The independent person will consider the initial decision and determination that was the subject of the request for a review and any Tier 1 review decision taken in respect of it (as well as any supporting information submitted by the claimant) with a view to identifying any material decision made under the Scheme with which the independent person disagrees.

10.15 The independent person will make a recommendation to the Home Office as to whether, why and how the determination in force should be reconsidered and will notify the claimant in writing of that recommendation.

10.16 A recommendation may recommend that the Home Office:

- (a) uphold a determination that is in force;
- (b) reinstate a determination that has since been withdrawn or revised; or
- (c) make a new determination,

and may recommend any other consequential provision required.

10.17 The Home Office will consider the recommendation of the independent person and will notify the claimant in writing of its Tier 2 review decision and will include the determination that is in force.

10.18 If the Home Office does not accept and implement the recommendation of the independent person, it will provide written reasons for its decision.

10.19 Where the claimant has been notified of a Tier 2 review decision and determination under paragraph 10.17, the claimant must, within 2 months of receipt of that notification, notify the Home Office in writing whether they wish to accept the determination.

10.20 The Home Office may extend the period in paragraph 10.19 if satisfied that there are reasonable grounds for the delay.

## **Application of Parts 6 and 7 to reviews**

10.21 The following provisions of Parts 6 (Claims) and 7 (Determinations) of the Scheme apply to a request for a review and a determination issued under this Part with the revisions set out below:

- (a) paragraphs 6.4 and 6.5 (supporting evidence) apply to a Tier 1 or Tier 2 review as if a reference to “Home Office” was a reference to “senior reviewer” or “independent person” respectively;
- (b) paragraphs 6.6 to 6.8 (medical evidence) apply to a Tier 1 review only. They apply as if, except in the case of paragraph 6.8, a reference to “Home Office” was a reference to a “senior reviewer”;
- (c) paragraph 6.10 (changed information);
- (d) paragraphs 7.3 and 7.4 (content of determination);
- (e) paragraph 7.8 (reconsideration of determination) and in its application to a Tier 1 review it will apply as if any reconsideration of the determination will be done by the senior reviewer;
- (f) paragraphs 7.9 and 7.10 (withdrawal of determination if not accepted and repayment of any interim payment made).

## **Withdrawal of a request for a review**

10.22 The claimant may, in writing, withdraw a request for a Tier 1 or Tier 2 review, in whole or in part, at any time.

10.23 If the claimant withdraws a request in whole, they may accept any determination in force or withdraw their claim under paragraph 6.13.

10.24 If the claimant withdraws a request in part:

- (a) in the case of a Tier 1 review, the senior reviewer will consider the remainder of the review and either remit the case under paragraph 10.8 or issue a determination under paragraph 10.9;
- (b) in the case of a Tier 2 review where the independent person has not yet made a recommendation under paragraph 10.15, the independent person will consider the remainder of the review with a view to making such a recommendation;
- (c) in the case of a Tier 2 review where the independent person has made a recommendation under paragraph 10.15, the Home Office will consider that recommendation in so far as it applies to the remainder of the review and will issue a Tier 2 review decision and a determination under para 10.17.

10.25 If the claimant has already received an interim payment in respect of their request or part of their request when it is withdrawn, that payment will be repayable to the Home Office.

## **ANNEX A – DEFINITION OF COMMONWEALTH CITIZEN**

Commonwealth citizen means a citizen of the following:

Anguilla, Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Bermuda, Botswana, British Antarctic Territory, British Indian Ocean Territory, Brunei, Canada, Cayman Islands, Cyprus (excluding the Sovereign base area), Dominica, Falkland Islands, Fiji, The Gambia, Ghana, Gibraltar, Grenada, Guyana, Hong Kong, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Montserrat, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Pitcairn, Henderson, Ducie and Oeno Islands, Saint Lucia, Samoa, Seychelles, Singapore, Sierra Leone, Solomon Islands, South Africa, South Georgia and the South Sandwich Islands, Sri Lanka, St Helena, Ascension and Tristan da Cunha, St Kitts and Nevis, St Vincent and The Grenadines, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Turks and Caicos Islands, Tuvalu, Uganda, Vanuatu, Virgin Islands, Zambia, Zimbabwe.

In addition, the following people are included:

- citizens of the United Kingdom and colonies by virtue of a connection to a country or territory on the above list;
- British subjects without citizenship under the law on 1 January 1973.

## ANNEX B – IMMIGRATION FEES AND LEGAL COSTS

### *Immigration Application Fees*

- B1. An award representing the amount of fees paid for an immigration application (“the application”) may be made to a primary claimant, estate, or close family member (“the fee payer”) if the following conditions are met.
- (a) The fee payer making the claim paid the fee and supplies proof of payment of the fee or such other information as may be reasonably required by the Home Office to establish the fee was paid.
  - (b) If the fee payer is a close family member, the fee payer further supplies in a format acceptable to the Home Office:
    - (i) confirmation from the primary claimant to whom the fee payer is related (or from the estate where the primary claimant is deceased) that the fee payer paid the fee on behalf of the relevant claimant;
    - (ii) signed agreement from that primary claimant (or estate) permitting the Home Office to make an award to the fee payer; and
    - (iii) signed agreement from that primary claimant (or estate) that they have not made and will not make additional claims for that same fee.
  - (c) The purpose of the application was to resolve uncertainty about lawful status.
  - (d) Immediately before the application was made, the person in respect of whom the application was made did, in fact, have lawful status.
  - (e) The application was one of the following types:
    - (i) British citizenship;
    - (ii) certificate of entitlement to a right of abode;
    - (iii) indefinite leave to enter;
    - (iv) indefinite leave to remain;
    - (v) no time limit;
    - (vi) returning resident visa application; or
    - (vii) a biometrics application ancillary to an application in (i) to (vi) above.
  - (f) The application to which the fee relates was unsuccessful and the fee payer has not already received re-imbusement of such fee.
  - (g) The application was unsuccessful solely because the relevant primary claimant (or deceased) could not provide sufficient evidence of lawful status despite that primary claimant (or deceased) having lawful status at the time the application was made.

B1A. Where an award is made under B1 in respect of a fee paid for an immigration application ('the original application'), the Home Office may make a further award in respect of any other immigration application fee and any associated immigration health charge paid under section 38 of the Immigration Act 2014 if the following conditions are met:

- (a) The fee or charge was paid in respect of an application made after the outcome of the original application was communicated to the person in respect of whom the original application was made.
- (b) The application was made for the sole purpose of resolving lawful status following the failure of the original application to resolve lawful status.
- (c) In the reasonable opinion of the Home Office, the application was, in all the circumstances, a reasonable response to the original application being unsuccessful.
- (d) The application did not resolve lawful status.
- (e) A re-imbusement of the fee or charge has not already been made.

#### *Legal costs*

B2. Where an award has been made in respect of an application fee under paragraph B1 or B1A, a contribution towards legal costs in respect of that application may be made to a primary claimant, estate or close family member ("the costs payer") if the following conditions are met.

- (a) The costs payer paid the costs and provides such evidence of payment of legal costs as the Home Office may reasonably require.
- (b) If the costs payer is a close family member, that costs payer must also provide in a format acceptable to the Home Office:
  - (i) confirmation from the primary claimant to whom the costs payer is related (or from the estate where the primary claimant is deceased) that the costs payer paid those legal costs on behalf of that primary claimant; or equivalent confirmation from the estate where the relation is deceased;
  - (ii) signed agreement from that primary claimant (or estate) permitting the Home Office to make a payment in respect of those legal costs to the costs payer; and

- (iii) signed agreement from that primary claimant (or estate) that they have not made and will not make additional claims for legal costs incurred in respect of the same application.
  - (c) In respect of legal services rendered on or after 30 April 2001, the person to whom the costs were paid was a “qualified person” within the meaning of section 84 of the Immigration and Asylum Act 1999.
- B3. An application under paragraph B2 is limited to one application for every fee reimbursement made under paragraph B1 or B1A.
- B4. The amount of contribution towards legal costs in respect of any application under paragraph B2 is limited to the lesser of:
- (a) the actual amount paid in respect of legal costs, and
  - (b) £500.

## **ANNEX C – DETENTION, DEPORTATION, REMOVAL AND RETURN**

- C1. An award under this Annex may be made to a primary claimant or an estate if the following conditions are met.
- (a) The primary claimant or (in the case of an estate) the deceased was detained, deported or removed under one or more provisions of the following legislation, or returned under one or more of those provisions or voluntarily:
    - (i) The Immigration Act 1971;
    - (ii) The Immigration and Asylum Act 1999;
    - (iii) The Immigration and Asylum Act 2002;
    - (iv) The United Kingdom Borders Act 2007.
  - (b) A material reason for such detention, deportation, removal or return was the primary claimant's or the deceased's inability to demonstrate lawful status and, in the case of a voluntary return, the primary claimant or deceased would not have returned voluntarily if the inability to demonstrate lawful status had not arisen.
  - (c) But for that inability, the Home Office reasonably determines that the primary claimant or the deceased would not have been detained, deported, removed or returned.
  - (d) In respect of detention:
    - (i) the detention occurred in a removal centre, short-term holding facility, prison or part of a prison and release from detention was prevented or not permitted by the relevant detaining authority; and
    - (ii) the decision to detain was not ancillary to consideration being given to automatic deportation of the relevant claimant under section 32 of the UK Borders Act 2007 by relevant detaining authorities, whether or not deportation subsequently occurred.
- C2. No award shall be made for a detention lasting 30 minutes or less.
- C3. Where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that the primary claimant or estate meets the conditions in this Annex for an award to be made, it shall be calculated in accordance with the amounts set out in the Table below.
- C4. Where an award is made in respect of a person who, immediately prior to immigration-related detention, was in prison or was lawfully in custody for non-immigration reasons, the award shall be reduced by 20% for that part of the award that pertains to the first 24 hours of immigration-related detention.

- C5. For the purposes of sub-paragraph C1(d), a removal centre or short-term holding facility has the same meaning as in section 147 of the Immigration and Asylum Act 1999.
- C6. An award under this section shall not take into account any impacts more appropriately taken into account under Annexes B, D, E, F, G or H of the Scheme.

**Table**

<b><u>Type of deportation or removal</u></b>	<b><u>Amount of award</u></b>
Deportation	£10,000
Administrative removal with reporting requirements	£7,500
Administrative removal with detention	£6,000
Administrative removal without detention or reporting requirements	£5,000
Any other removal or return where the reason for the removal or return related to difficulties associated with an inability to establish lawful status	£1,000
<b><u>Detention</u></b>	<b><u>Amount of award</u></b>
After the first 30 minutes of detention, hourly award for the next 3 hours of detention  (No award for detention lasting 30 minutes or less)	£500 per hour (Part hours to be pro-rata'd)
Hourly award for the subsequent 6 hours of detention	£300 per hour (Part hours to be pro-rata'd)
Hourly award for the balance of the first 24 hours of detention	£100 per hour (Part hours to be pro-rata'd)
For each full day of continuous detention following the first full 24 hours	1. £500 per 24-hour period for the first 30 days 2. £300 per 24-hour period for the subsequent 60 days

	3. £100 per 24-hour period for any period of detention thereafter (Part days to be pro-rata'd)
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## **ANNEX D LOSS OF ACCESS TO EMPLOYMENT**

D1. For the purposes of this Annex:

“employment” means paid work in the United Kingdom as an employed or self-employed person for tax purposes;

“period of loss” means the period starting on the date on which the period of loss begins, as determined by whichever of paragraphs D5 or D12 apply; and ending on the date on which the period of loss ends as determined by whichever of paragraphs D6 and D7 or paragraphs D13 and D14 apply;

“relevant date” means the date on which the primary claimant or (in the case of an estate) the deceased was notified or became aware, whether through contact with the Home Office or otherwise, that they could not demonstrate their lawful status in the United Kingdom;

“termination of employment” means the termination of an existing employment relationship; or the withdrawal or contractual termination of an accepted offer of employment.

D2. A claim under this Annex will be considered in accordance with paragraphs D4 to D10 where the primary claimant or the estate requests compensation based on actual earnings in the claim form.

D3. A claim under this Annex will be considered in accordance with paragraphs D11 to D16 where the primary claimant or the estate:

- (a) does not request compensation based on actual earnings in the claim form; or
- (b) requests compensation based on actual earnings in the claim form but does not meet the evidential threshold in paragraph D8.

### **Actual earnings award**

D4. An actual earnings award for loss of access to employment may be made to a primary claimant or an estate if the following conditions are met.

- (a) At the relevant date the primary claimant or (in the case of an estate) the deceased:
  - (i) was in employment or had accepted an offer of employment; or
  - (ii) was not in employment but had been in regular employment in the previous two years.
- (b) The primary claimant’s or the deceased’s employment was terminated or the primary claimant or deceased otherwise ceased to have access to employment.

- (c) The reason for the termination of employment, or for the primary claimant or the deceased to otherwise cease to have access to employment, was the primary claimant or the deceased's inability to demonstrate their lawful status in the United Kingdom.
- (d) The primary claimant or the deceased took reasonable steps to resolve their lawful status in the United Kingdom.

D5. For the purposes of paragraph D4, the period of loss begins on the later of:

- (a) the date on which the primary claimant or the deceased began to take the steps stated in D4(d); or
- (b) the date on which the primary claimant's or the deceased's employment was terminated because of an inability to demonstrate lawful status.

D6. For the purposes of paragraph D4, the period of loss ends on the earlier of:

- (a) three months from the date on which the primary claimant or the deceased received a document from the Home Office proving their lawful status in the United Kingdom;
- (b) the date on which the primary claimant or the deceased commenced employment;
- (c) where an estate of a primary claimant applies for an award under this Annex, the date on which the deceased died; or
- (d) where a primary claimant is not resident in the United Kingdom, the date on which they ceased to be resident in the United Kingdom.

D7. Where a primary claimant is not resident in the United Kingdom as a direct result of Home Office enforcement action or the threat of Home Office enforcement action, the period of loss ends on the earlier of:

- (a) the date on which the primary claimant commenced employment in the state in which they are resident; or
- (b) the date on which the primary claimant received confirmation from the Home Office that they are eligible for lawful status in the United Kingdom.

D8. Where the evidence provided is clear and the Home Office is satisfied so as to be sure that the primary claimant or the estate meets the conditions in paragraph D4, an actual earnings award will be calculated by multiplying the number of months comprising the period of loss by:

- (a) where the primary claimant or the deceased was in employment on the relevant date, their actual monthly net pay immediately prior to the termination of their employment;

- (b) where the primary claimant or the deceased was not in employment on the relevant date, their average monthly net pay based on their taxable earnings in the two years immediately preceding the relevant date; or
- (c) where the primary claimant or the deceased had accepted an offer of employment at the relevant date, the net monthly pay that would have been payable under the terms of the contract of employment.

D.9 Where this would result in an actual award that is less than a general award, a general award will be given.

D10. For the purposes of paragraph D8, part months are to be treated as full months.

### **General award**

D11. A general award for loss of access to employment may be made to a primary claimant or an estate if the following conditions are met.

- (a) At the relevant date the primary claimant or (in the case of an estate) the deceased:
  - (i) was in employment or had accepted an offer of employment; or
  - (ii) was not in employment but had been in regular employment in the previous two years.
- (b) The primary claimant's or the deceased's employment was terminated or the primary claimant or deceased otherwise ceased to have access to employment.
- (c) The reason for the termination of employment, or for the primary claimant or the deceased to otherwise cease to have access to employment, was the primary claimant or the deceased's inability to demonstrate their lawful status in the United Kingdom.

D12. For the purposes of paragraph D11, the period of loss begins on the later of:

- (a) the relevant date; or
- (b) the date on which the primary claimant's or the deceased's employment was terminated because of an inability to demonstrate lawful status.

D13. For the purposes of paragraph D11, the period of loss ends on the earlier of:

- (a) three months from the date on which the primary claimant or the deceased received a document from the Home Office proving their lawful status in the United Kingdom;
- (b) the date on which the primary claimant or the deceased commenced employment;
- (c) where an estate of a primary claimant applies for an award under this Annex, the date on which the deceased died;
- (d) where a primary claimant is not resident in the United Kingdom, the date on which they ceased to be resident in the United Kingdom; or

(e) 12 months from the date upon which the period of loss began.

D14. Where a primary claimant is not resident in the United Kingdom as a direct result of Home Office enforcement action or the threat of Home Office enforcement action, the period of loss ends on the earlier of:

- (a) the date on which the primary claimant commenced employment in the state in which they are resident;
- (b) the date on which the primary claimant received confirmation from the Home Office that they are eligible for lawful status in the United Kingdom; or
- (c) 12 months from the date upon which the period of loss began.

D15. Where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that the primary claimant or estate meets the conditions in paragraph D10, a general award for loss of access to employment will be calculated by multiplying the number of months comprising the period of loss by:

- (a) where the primary claimant or the deceased was in employment on the relevant date, their actual monthly net pay immediately prior to the termination of their employment up to a maximum of £1147;
- (b) where the primary claimant or the deceased was not in employment on the relevant date, their average monthly net pay based on their taxable earnings in the two years immediately preceding the relevant date up to a maximum of £1147; or
- (c) where the primary claimant or the deceased had accepted an offer of employment at the relevant date, the net monthly pay that would have been payable under the terms of the contract of employment up to a maximum of £1147.

D16. For the purposes of paragraph D15, part months are to be treated as full months.

## **ANNEX E – LOSS OF ACCESS TO CHILD BENEFIT, CHILD TAX CREDIT OR WORKING TAX CREDIT**

E1. An award for loss of access to child benefit or child tax credit may be made to a primary claimant or estate if one of the following conditions is met.

(a) Where the claimant (or in the case of an estate) the deceased was in receipt of child benefit or child tax credit and:

- (i) payment of child benefit or child tax credit was terminated;
- (ii) the reason for that termination was the claimant or deceased's inability to demonstrate their lawful status in the United Kingdom; and
- (iii) HMRC has not made a payment in relation to that benefit under the arrangements set out in paragraphs 3.11 and 3.12 of the Scheme (or otherwise) for benefit payable during the period of loss of access.

(b) Where the claimant (or in the case of an estate) the deceased applied for child benefit or child tax credit and:

- (i) that application was refused;
- (ii) the reason for that refusal was the claimant or deceased's inability to demonstrate their lawful status in the United Kingdom; and
- (iii) HMRC has not made a payment in relation to that benefit under the arrangements set out in paragraphs 3.11 and 3.12 of the Scheme (or otherwise) for benefit payable during the period of loss of access.

(c) Where the claimant (or in the case of an estate) the deceased was in receipt of working tax credit and:

- (i) payment of working tax credit was terminated;
- (ii) the reason for that termination was either:
  - (a) as a direct consequence of their inability to demonstrate their lawful status in the United Kingdom the claimant or deceased was unable to continue to meet the condition of payment of being in remunerative work; or
  - (b) notwithstanding that they were in remunerative work, the claimant or deceased's inability to demonstrate their lawful status in the United Kingdom; and
- (iii) HMRC has not made a payment in relation to that benefit under the arrangements set out in paragraphs 3.11 and 3.12 of the Scheme (or otherwise) for benefit payable during the period of loss of access;

(d) Where the claimant (or in the case of an estate) the deceased applied for working tax credit and

- (i) that application was refused;
- (ii) the reason for that refusal was notwithstanding that they were in remunerative work, the claimant or deceased's inability to demonstrate their lawful status in the United Kingdom; and
- (iii) HMRC has not made a payment in relation to that benefit under the arrangements set out in paragraphs 3.11 and 3.12 of the Scheme (or otherwise) for benefit payable during the period of loss of access.

E2. Where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that the primary claimant or the deceased meets the conditions in paragraph E1 the primary claimant or the estate will be awarded the payment set out in the Table below.

**Table**

Denial of access to child benefit	£1,264
Denial of access to child tax credit	£2,500
Denial of access to working tax credit	£1,100

## ANNEX F DENIAL OF ACCESS TO SERVICES

F1. For the purposes of this Annex:

“relevant date” means the date on which the primary claimant, or (in the case of an estate) the deceased, was notified or became aware, whether through contact with the Home Office or otherwise, that they could not demonstrate their lawful status in the United Kingdom;

“relevant period” means the period starting on the relevant date and ending on the date on which the relevant primary claimant or the deceased received a document from the Home Office proving their lawful status in the United Kingdom.

F2. The Home Office will not take into account any impacts more appropriately taken into account when determining the amount of award under Annexes B, C, D, E, G and H of the Scheme.

### Housing

F3. An award for denial of access to housing services (either by way of not being able to access the service at all or, having been able to do so, having that access withdrawn) may be made to a primary claimant or estate if the following conditions are met.

(a) The primary claimant or (in the case of an estate) the deceased was denied access to housing services during the relevant period including but not limited to:

- (i) social housing allocations;
- (ii) emergency or temporary accommodation;
- (iii) the private rented sector;
- (iv) the right to buy scheme.

(b) The primary claimant or the deceased would have accessed housing services during the relevant period had they not been denied access.

(c) The reason the primary claimant or the deceased was denied access to housing services was their inability to demonstrate their lawful status.

F4. Where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that the primary claimant or the deceased meets the conditions in paragraph F3, the primary claimant or the estate will be awarded the amount set out in Table 1 below. No additional awards are payable for multiple instances of denial of access to housing services.

**Table 1**

Denial of access to housing services	£1000
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**Health**

*Denial of access to free NHS care*

- F5. An award for denial of access to free NHS care (either by way of not being able to access the service at all or, having been able to do so, having that access withdrawn) may be made to a primary claimant or estate if the following conditions are met.
- (a) The primary claimant or (in the case of an estate) the deceased was denied access to free NHS care and, as a result, did not receive any NHS treatment during the relevant period.
  - (b) The primary claimant or the deceased would have received NHS treatment for a medical condition during the relevant period had they not been denied access.
  - (c) The reason the primary claimant or the deceased was denied access to free NHS care was their inability to demonstrate their lawful status.
- F6. Where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that the primary claimant or the deceased meets the conditions in paragraph F5, the primary claimant or the estate will be awarded the payment set out in Table 2 below. No additional awards are payable for multiple instances of denial of access to free NHS care.

**Table 2**

Denial of access to free NHS healthcare	£500
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*Reimbursement of private medical fees incurred outside the United Kingdom*

- F7. An award for reimbursement of private medical fees for treatment received outside the United Kingdom may be made to a primary claimant or estate if the following conditions are met.
- (a) The primary claimant or (in the case of an estate) the deceased was unable to access free NHS care during the relevant period because they were not in the United Kingdom at the time they required treatment for a medical condition.
  - (b) The reason the primary claimant or the deceased was not in the United Kingdom at the time they required treatment for a medical condition was a direct result of:
    - (i) Home Office enforcement action or the threat of such action; or

- (ii) a decision by the primary claimant or deceased to leave the United Kingdom under voluntary return arrangements due to their inability to demonstrate lawful status and the primary claimant or deceased would not have made that decision if the inability to demonstrate lawful status had not arisen.
  - (c) The primary claimant or the deceased paid private medical fees for the treatment of a medical condition in the state in which they were resident during the relevant period.
  - (d) The primary claimant or the deceased would have been eligible to receive the equivalent treatment of the medical condition free under the NHS had they been in the United Kingdom with lawful status.
- F8. In respect of a claim made under paragraph F7 (treatment abroad), where, on the basis of the evidence provided, the Home Office is satisfied so as to be sure that the primary claimant or the deceased meets the conditions in paragraph F7, the primary claimant or the estate will be reimbursed the full amount of the private medical fees incurred.

*Re-imburement of private medical fees incurred within the United Kingdom*

- F9. An award for reimbursement of private medical fees for treatment received within the United Kingdom may be made to a primary claimant or estate if the following conditions are met.
- (a) The primary claimant or (in the case of an estate) the deceased was unable to access free NHS care during the relevant period solely because they were unable to demonstrate their lawful status at the time they required treatment for a medical condition.
  - (b) The primary claimant or the deceased paid private medical fees for the treatment of a medical condition.
  - (c) The primary claimant or the deceased would have been eligible to receive equivalent treatment for the medical condition for free under the NHS had they been able to demonstrate lawful status.
- F10. In respect of a claim made under paragraph F9 (treatment in the United Kingdom), where, on the basis of the evidence provided, the Home Office is satisfied so as to be sure that the primary claimant or the deceased meets the conditions in paragraph F9, the primary claimant or the estate will be reimbursed the lesser of:
- (a) the amount the NHS would have charged a person who was ineligible, by reason of immigration status, to receive the equivalent treatment under the NHS for free; or
  - (b) the actual amount of private medical fees incurred.

## Education

### *Denial of access to higher education as a home student*

F11. An award for denial of access to higher education as a home student may be made to a primary claimant or estate if the following conditions are met.

- (a) The primary claimant or (in the case of an estate) the deceased was denied access to higher education as a home student in the United Kingdom and, as a result, did not attend any higher education institution, during the relevant period.
- (b) The primary claimant or the deceased would have taken up an opportunity at a higher education institution during the relevant period had they not been denied access.
- (c) The reason the primary claimant or the deceased was denied access to higher education as a home student was their inability to demonstrate their lawful status.

F12. Where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that the claimant meets the conditions in paragraph F11, the primary claimant or estate will be awarded the payment set out in Table 3 below. No additional awards are payable for multiple instances of denial of access to higher education as a home student.

**Table 3**

Denial of access to higher education	£500
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### *Reimbursement of international student fees*

F13. An award for reimbursement of international student fees may be made to a primary claimant or an estate if the following conditions are met.

- (a) The claimant or (in the case of an estate) the deceased paid international student fees rather than home student fees to attend a higher education institution during the relevant period.
- (b) The reason the claimant or the deceased paid international student fees rather than home student fees to attend a higher education institution was the claimant's or the deceased's inability to demonstrate their lawful status.

F14. Where clear evidence is provided and the Home Office is satisfied so as to be sure that the primary claimant or the deceased meets the conditions in paragraph F13, the

primary claimant or estate will be reimbursed the difference between the international student fee rate and the home student fee rate for the relevant period.

## **Banking**

### *Denial of access to banking services*

F15. An award for denial of access to banking services (either by way of not being able to access the service at all or, having been able to do so, having that access withdrawn), may be made to a primary claimant or an estate if the following conditions are met

- (a) The primary claimant or (in the case of an estate) the deceased was denied access to banking services in the United Kingdom during the relevant period including but not limited to:
  - (i) a bank account;
  - (ii) an overdraft facility;
  - (iii) a mortgage product;
  - (iv) a loan facility.
- (b) The claimant or the deceased would have accessed banking services during the relevant period had they not been denied access.
- (c) The reason the claimant or the deceased was denied access to banking services was their inability to demonstrate their lawful status.

F16. Where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that the primary claimant or the deceased meets the conditions in paragraph F15, the primary claimant or estate will be awarded a payment in accordance with Table 4 below. No additional awards are payable for multiple instances of denial of access to banking services or the withdrawal of access to existing banking services.

### **Table 4**

Denial of access to banking services	£200
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### *Reimbursement of losses resulting from denial of access to banking services*

F17. An award for reimbursement of losses resulting from denial of access to banking services may be made to a primary claimant or an estate if the following conditions are met.

- (a) The claimant or (in the case of an estate) the deceased had direct financial losses resulting from a denial of access to banking services during the relevant period.
- (b) the reason the claimant or deceased had direct financial losses resulting from a denial of access to banking services was the claimant's or the deceased's inability to demonstrate their lawful status.

F18. Where clear evidence is provided and the Home Office is satisfied so as to be sure that the primary claimant or the deceased meets the conditions in paragraph F17, the primary claimant or estate will be reimbursed the direct financial losses.

## ANNEX G HOMELESSNESS

G1. For the purposes of this Annex:

“relevant date” means the date on which the primary claimant, or (in the case of an estate) the deceased, was notified or became aware, whether through contact with the Home Office or otherwise, that they could not demonstrate their lawful status in the United Kingdom;

“relevant period” means the period starting on the relevant date and ending on the date on which on which the relevant primary claimant or the deceased received a document from the Home Office proving their lawful status in the United Kingdom;

“homeless” means a primary claimant or the deceased did not have access to accommodation in which it was reasonable for them to reside and “homelessness” refers to the state of being homeless.

G2. The Home Office will not take into account any impacts more appropriately taken into account when determining the amount of award under Annexes B to F and H of the Scheme.

G3. For the purposes of this Annex, the Home Office will consider that a primary claimant or the deceased did not have access to accommodation in which it was reasonable for them to reside if they were: rough sleeping; staying temporarily in a hostel, night shelter or bed and breakfast; staying temporarily in other accommodation with poor conditions that adversely impacted their health; or squatting.

G4. An award for homelessness may be made to a primary claimant or an estate if the following conditions are met.

(a) The claimant or (in the case of an estate) the deceased became homeless on or after the relevant date.

(b) The reason the claimant or the deceased became homeless was their inability to demonstrate their lawful status.

G5. The period of homelessness, to which a homelessness payment relates, starts on the relevant date or, if later, the date on which the claimant or the deceased became homeless and ends on the date on which the claimant or the deceased secured access to new accommodation in which it was reasonable for them to reside.

G6. For the purposes of paragraph G5, part months are to be treated as full months.

G7. Where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that the primary claimant or the deceased meets the conditions in paragraph G4, the payment will be calculated by reference to the period of homelessness in months and the corresponding table rate in the Table below.

**Table**

Per month of homelessness	£250
Maximum award under Annex G	£25,000

## ANNEX H - IMPACT ON LIFE

- H1. An award under this Annex may be made to a primary claimant, an estate or a close family member if the following conditions are met.
- (a) In respect of a primary claimant or an estate, the primary claimant or (in the case of an estate) the deceased experienced detrimental impacts as a direct consequence of being unable to demonstrate lawful status in the United Kingdom.
  - (b) In respect of a close family member of a primary claimant or the deceased, the close family member experienced detrimental impacts as a direct consequence of being adversely affected by that primary claimant's (or deceased's) inability to demonstrate lawful status.
  - (c) The detrimental impacts experienced are of the type described in paragraph H2 (a) to (f).
  - (d) In respect of a close family member, those detrimental impacts are of sufficient severity to attract an award at Level 2 or above in the Table below.
- H2. Detrimental impacts for the purposes of paragraph H1 are non-financial impacts of the following type and description:
- (a) inconvenience;
  - (b) injury to feelings, including anxiety, distress and reputational damage;
  - (c) family separation;
  - (d) immigration difficulties when attempting to return to the United Kingdom following a trip abroad;
  - (e) inability to attend significant family occasions, celebrations and events;
  - (f) impacts relating to a deterioration in physical or mental health such as pain, suffering and loss of amenity.
- H3. Based on the available evidence provided, the Home Office will determine whether to make an award under this Annex. If an award is made, the Home Office will determine the amount of award payable by reference to the amounts set out in the Table below, taking into account all the circumstances, the number, severity and duration of detrimental impacts and all available evidence.
- H4. The Home Office will make a determination under this Annex on the balance of probabilities.
- H5. Only one award will be made under this Annex, covering all relevant detrimental impacts and the Home Office will not take into account any impacts more appropriately taken into account when determining the amount of award under Annexes B to G of the Scheme.

H6. No award is to be made to a close family member for detrimental impacts assessed as falling within Level 1 of the Table below.

H7. Where a claimant suffers a physical or mental health condition attributable in part to:

(a) the acceleration or exacerbation of a pre-existing condition; and/or

(b) causes unrelated to the inability to demonstrate lawful status,

the Home Office shall take into account the degree of exacerbation, acceleration, or nature and extent of contributing causes when determining the level of award.

**Table**

Level 1	Marked detriment such as inconvenience, annoyance, frustration and worry, where the effect on the claimant was fairly short-lived (lasting up to a few weeks). Family events may have been missed. Level 1 awards are only available for primary claimants and estates.	£250
Level 2	Moderately severe impact in terms of distress, anxiety or reputational damage over an extended period of time (weeks or months) or where multiple cumulative impacts were suffered for a relatively short period of time. Claimant should still be able to live a relatively normal life for much of the time. There may have been an inability to attend one or more significant family events; or there may have been family separation.	£1,000
Level 3	Some aspects of the claimant's life have suffered significant detriment. Impacts will go beyond distress or inconvenience. The claimant may have experienced symptoms such as sleepless nights, fear of going out, inability to concentrate and there may have been an impact on the claimant's relationships with others. The claimant may have visited a medical practitioner in relation to these experiences and been prescribed medication or other treatment	£3,000

	<p>in relation to these. The claimant may have been unable to engage in activities with which he or she was previously familiar, including social and sporting activities. Not all aspects of the claimant's life will have been affected but those areas that are affected will have been affected significantly so as to either stop the claimant from engaging in an activity or in having to alter the nature and/or extent of their engagement in that activity.</p>	
Level 4	<p>The claimant's ability to live a relatively normal life has been substantially affected. More than one area of their life has been affected and the overall impacts have been significant. Cumulative impacts will have been experienced for an extended period (running into months). There will be a detrimental, demonstrable effect on the claimant's ability to live a relatively normal life, and with recovery or a return to a relatively normal life having taken a reasonable amount of time. Short periods of focused medical treatment may have been necessary. Harmful impacts will not normally have continued for more than a few months.</p>	£5,000
Level 5	<p>Significant and/or lasting impacts to the extent that the claimant's ability to live a relatively normal life has been seriously compromised. Cumulative impacts will have been experienced for a prolonged period (months or years). The claimant's domestic life will have undergone change of some description, such as having regular medical treatment, care visits or other therapeutic intervention. The harm experienced will have continued for several months or years</p>	£7,000

	with recovery taking a significant amount of time or may not be fully attainable.	
Level 6	Profound impacts on a claimant's life which are likely to be irreversible. This is expected to involve major physical or mental health impacts, where the claimant has been permanently affected or where recovery or return to a relatively normal life is likely to take (or has taken) several years.	£10,000+

## ANNEX I: DISCRETIONARY AWARD

11. An award may be considered under this Annex to a primary claimant, an estate or a close family member if the following conditions are met.
  - (a) The primary claimant or (in the case of an estate) the deceased experienced significant impacts, loss or detriment of a financial nature as a direct consequence of being unable to establish their lawful status.
  - (b) In relation to a close family member, the close family member experienced significant impacts, loss or detriment of a financial nature as a result of being adversely affected by the primary claimant's or the deceased's inability to establish their lawful status.
  - (c) The impact, loss or detriment is not of a kind provided for in Annexes B to H, whether or not an award has been made under one or more of those Annexes.
  - (d) The impact, loss or detriment is not of a kind excluded from consideration under paragraph 3.15 of the Scheme.
  - (e) The Home Office is satisfied the evidence, mitigation and causation requirements set out in paragraph I2 have all been met.
12. Subject to paragraph I3, no award shall be made under this Annex unless the Home Office is satisfied there is clear and compelling evidence that:
  - (a) the primary claimant, close family member or (in the case of an estate) the deceased suffered the losses or impacts claimed;
  - (b) at all material times, the primary claimant, close family member or the deceased used best endeavours to minimise and mitigate the losses or impacts suffered;
  - (c) the losses or impacts arose solely as a direct consequence of the inability to demonstrate lawful status;

and, where it is reasonable to expect as much, that evidence is corroborated by sources independent to the claimant.
13. If the claimant cannot demonstrate some or all of the requirements in paragraph I2 are met, the Home Office may nevertheless consider making an award if it is satisfied that there are wholly exceptional circumstances which make an award appropriate.
14. Where the Home Office makes an award under this Annex, the Home Office may award less than the full amount claimed, or make an award that does not cover the full extent of any losses or costs a claimant can establish were incurred, or which represents a proportion of any such losses or costs.