

EXPLANATORY MEMORANDUM TO
CRIMINAL INJURIES COMPENSATION SCHEME 2012 (AMENDMENT)
INSTRUMENT 2019

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes changes to the Criminal Injuries Compensation Scheme 2012 (the Scheme).

2.2 The amended Scheme will remove the pre-1979 same roof rule currently found at paragraph 19 (see 7.4 below). The effect of this will be to enable victims of a crime of violence committed in the period from 1 August 1964 until 1 October 1979, who have not applied previously for compensation under the Scheme, to submit an application. Ministers have also determined that provision should be made in the amended 2012 Scheme to enable victims whose applications for compensation were refused under the pre-1979 rule to reapply.

2.3 The amendments to the Criminal Injuries Compensation Scheme 2012 will:

- remove paragraph 19,
- provide for paragraph 18 (duplicate applications) to be disregarded for applicants that were previously refused an award on the basis of the pre-1979 same roof rule, under the non-statutory schemes or under paragraph 7 of the 1996, 2001 and 2008 schemes or paragraph 19 of the 2012 scheme, and are re-applying,
- provide for a time limit on the submission of duplicate applications,
- provide in paragraphs 87, 88 and 89 for new applicants and those re-applying to make applications, and
- extend the application of paragraph 20 to applications received from the inception of the first Criminal Injuries Compensation Scheme in August 1964.

3. Matters of special interest to Parliament

3.1 None.

4. Extent and Territorial Application

4.1 The Scheme applies to injuries occurring in England, Wales and Scotland. Criminal justice is devolved to the Scottish Parliament and Government. The CICA is a cross-border public authority under the Scotland Act 1998, and therefore the Secretary of State retains power to make a scheme for Great Britain. He has consulted the Scottish

Government in relation to these changes in accordance with his obligation under section 88 of the Scotland Act 1998.

5. European Convention on Human Rights

5.1 The Secretary of State has made the following statement regarding Human Rights:

“In my view the provisions of the Criminal Injuries Compensation Scheme 2012 (amended 2019) are compatible with the Convention rights.”

6. Legislative Context

6.1 The amended 2012 Scheme is made pursuant to the Criminal Injuries Compensation Act 1995 (the 1995 Act). Section 1 of the 1995 Act requires the Secretary of State to make arrangements to compensate those who have suffered a criminal injury through a scheme known as the Criminal Injuries Compensation Scheme. The 1995 Act requires that the scheme shall provide for a standard amount of compensation for an injury, shown in a tariff, and additional amounts for loss of earnings, special expenses and for fatal cases.

6.2 The Secretary of State’s arrangements for the payment of compensation include the designation of the Criminal Injuries Compensation Authority (CICA) to administer the Scheme. The 1995 Act stipulates that no decision taken by a claims officer shall be regarded as having been taken by, or on behalf of, the Secretary of State.

6.3 Section 11(3) of the 1995 Act requires that alterations to the Criminal Injuries Compensation Scheme which concerns the circumstances in which an award may be withheld or compensation reduced are approved by a resolution of each House.

6.4 EU Directive 2004/80/EC requires Member States to provide compensation to victims of violent crime committed in their territories. The Directive does not prescribe the content of national schemes. The United Kingdom has also signed and ratified the Council of Europe Convention on the Compensation of Victims of Violent Crimes (CETS No 116). The 2012 Scheme is made in accordance with these and other international obligations, such as those relating to victims of trafficking in human beings, where they are relevant.

7. Policy background

What is being done and why?

7.1 The Criminal Injuries Compensation Scheme is made by the Secretary of State under the Criminal Injuries Compensation Act 1995. The Scheme which has operated since 1964 exists to compensate victims of violent crime in Great Britain (England, Wales and Scotland); Northern Ireland has its own separate scheme.

7.2 The first statutory scheme came into force in 1996 further to the introduction of the Criminal Injuries Compensation Act 1995 with awards in accordance with a tariff-based formula in recognition of the victim’s pain and suffering. Subsequent schemes made under the same legislation followed in 2001, 2008 and most recently in 2012.

The current scheme was introduced in 2012 following the consultation, ‘Getting it right for victims and witnesses’.

- 7.3 The Scheme provides for awards based upon a tariff of serious physical and mental injuries. Only injuries listed on the tariff can be compensated. There is a 2-year time limit on making claims, which may be extended in exceptional circumstances. Eligibility criteria also apply which may affect an award. Amendments to the current Scheme are required in respect of one of the eligibility rules, the so-called ‘same roof’ rule.
- 7.4 The first non-statutory scheme established in 1964 contained a “same roof” rule that precluded an award for criminal injury if, at the time of the incident giving rise to that injury, the applicant and the assailant were living together as members of the same family. A 1964 Government White Paper said that the rationale for the same roof rule arose out of “the difficulty in establishing the facts and ensuring that the compensation does not benefit the offender”. The current version of the pre-1979 rule is contained in paragraph 19 of the 2012 Scheme.
- 7.5 The rule was amended for incidents resulting in injury post 1 October 1979 so that applicants could still be refused compensation if at the time of the incident they were adults living with the assailant as members of the same family, unless they no longer live together and are unlikely to do so again. The current version of the post-1979 rule is contained in paragraph 20 of the 2012 Scheme.
- 7.6 In a judgment on 24 July 2018 the Court of Appeal for England and Wales found that the pre-1979 same roof rule amounted to unlawful discrimination and constituted a breach of the appellant’s human rights. The remedy declared by the court is that the appellant is not prevented by paragraph 19 of the 2012 Scheme from being paid an award of compensation. The Secretary of State decided not to seek permission to appeal, and committed, in the Victims’ Strategy (published on 10 September 2018), to abolish the pre-1979 same roof rule. Action is required to bring about changes to the statutory scheme to remedy the discrimination and prevent it from continuing.
- 7.7 Pending amendment of the Scheme, in relation to the pre-1979 same roof rule there were conflicting court decisions in Scotland and in England and Wales. An appeal to the Supreme Court in a Scottish case under the 2008 Scheme was resolved by agreement between the parties without a hearing in January 2019.
- 7.8 On 10 December 2018 in a written answer to a PQ 199886, Ministers announced that an amended 2012 Scheme would be laid before Parliament in due course to remove the pre-1979 same roof rule. The answer stated that it is intended to enable victims whose applications for compensation had previously been refused under this rule to reapply.
- 7.9 The effect of the amendments will be to enable victims of violent crimes committed in the period from 1 August 1964 to 1 October 1979, who have not applied previously for compensation under the Scheme, to submit an application. In addition, the amendments will enable victims whose applications for compensation were refused under the pre-1979 rule to reapply.

7.10 The amendments will apply to new and unresolved applications, and re-applications submitted on/after the date that the amended 2012 Scheme comes into effect. Applicants will be required to meet all of the other requirements and eligibility criteria within the 2012 Scheme in order to qualify for an award.

7.11 The post-1979 same roof rule will be considered in the review of the scheme that was also announced in the Victims' Strategy in September 2018, which will report in 2019. However, to avoid setting up a potentially discriminatory position whereby adults are treated more favourably if the offence happened pre-1979, we will extend the current post-1979 rule at paragraph 20 of the 2012 Scheme to a start date from the Scheme's inception in 1964. This will mean there is consistency in how the rule applies to all adult applicants.

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

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

9. Consolidation

9.1 This instrument does not give rise to the need for any consolidation.

10. Consultation outcome

10.1 There has not been a consultation on the proposed amendments. The amendments are limited and to achieve a specific purpose, and the reason for proceeding with removal of the pre-1979 same roof rule now is to respond to a court judgment. A number of issues and concerns about the 2012 Scheme are being considered as part of the review of the 2012 Scheme announced in the Victims' Strategy. The terms of reference for the review were set out in a written ministerial statement on 18 December 2018. There will be a public consultation and a new Scheme will be laid following that.

11. Guidance

11.1 The CICA which administers the 2012 Scheme, will update guidance available on GOV.UK on how to apply for compensation and what the changes to the Scheme mean for applicants. This will be available before these changes comes into force.

12. Impact

12.1 An Impact Assessment is submitted with this memorandum and published on legislation.gov.uk.

13. Regulating small business

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

14. Monitoring & review

14.1 The CICA will monitor the outcome of the commencement of the changes to the Scheme. It is intended to make use of the information the CICA routinely collects.

This includes information on the number of claims, the number and value of awards, CICA will also update guidance to staff on how to assess eligibility as a result of the changes to the Scheme.

15. Contact

- 15.1 Joanne Savage at the Ministry of Justice (email: joanne.savage1@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Laura Beaumont and Abigail Plenty (Job-Share), Deputy Director for Vulnerability Policy at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Edward Argar at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.