

Criminal Injuries Compensation Scheme 2012 (Amendment) Instrument 2019

Amendments to the Criminal Injuries Compensation Scheme 2012, laid in draft before Parliament by the Secretary of State pursuant to section 11(3) of the Criminal Injuries Compensation Act 1995(a), for approval by resolution of each House under section 11(5) of that Act.

Citation and commencement

1. This instrument may be cited as the Criminal Injuries Compensation Scheme 2012 (Amendment) Instrument 2019 and comes into force 21 days after the day on which it is made by the Secretary of State.

Amendments to the Criminal Injuries Compensation Scheme 2012

2.—(1) In accordance with the powers conferred by section 11(3)(e) of the Criminal Injuries Compensation Act 1995, the Secretary of State makes the following amendments to the Criminal Injuries Compensation Scheme 2012(b).

(2) Any reference in this instrument to a paragraph or an Annex is to a paragraph of, or Annex to, that Scheme.

Amendment to paragraph 2

3. In paragraph 2, at the end, insert “Paragraph 146 applies in relation to determinations or decisions to be made on or after the 2019 amendment date in respect of applications received on or after 27 November 2012 or in respect of awards made pursuant to such applications.”.

4. Accordingly, paragraph 2, as amended, reads as follows—

“2. This Scheme comes into force on whichever is the later of 30 September 2012 or the day after the end of the period of two weeks beginning with the day on which it is made. An application for compensation received by the Authority on or after the date on which this Scheme comes into force will be determined in accordance with this Scheme. Paragraphs 141 to 143 apply in relation to applications received before then. Paragraph 146 applies in relation to determinations or decisions to be made on or after the 2019 amendment date in respect of applications received on or after 27 November 2012 or in respect of awards made pursuant to such applications.”.

Insertion of paragraph 2A

5. After paragraph 2, insert—

“2A.—(1) This Scheme incorporates amendments made by the Criminal Injuries Compensation Scheme 2012 (Amendment) Instrument 2019, which came into force on the 2019 amendment date (as to which see Annex A).

(2) Those amendments:

- (a) omitted paragraph 19;
- (b) amended paragraphs 2, 18, 20, 87, 88, 89, 141 and Annex A;
- (c) inserted this paragraph and paragraphs 18A, 88A, 145 and 146.”.

(a) 1995 c. 53.

(b) The Criminal Injuries Compensation Scheme 2012 is available at <https://www.gov.uk/government/publications>. Hard copies of the Scheme are available for inspection free of charge from the Family and Criminal Justice Policy Directorate at the Ministry of Justice, 102 Petty France, London SW1H 9AJ.

Amendment to paragraph 18

6. In paragraph 18, at the beginning, insert “Subject to paragraph 18A,”.

7. Accordingly, paragraph 18, as amended, reads as follows—

“18. Subject to paragraph 18A, an award will not be made to a person in respect of a criminal injury where that person has previously made an application in respect of the same injury under this Scheme or any Criminal Injuries Compensation Scheme mentioned in paragraph 141, irrespective of whether or how that application was finally disposed of.”.

Insertion of paragraph 18A

8. After paragraph 18, insert—

“18A.—(1) A person who has previously made an application under this Scheme, under any Criminal Injuries Compensation Scheme mentioned in paragraph 141, or under a prior non-statutory scheme, may make a new application under this Scheme in respect of the same criminal injury if the conditions in sub-paragraph (2) or (3) are satisfied.

(2) The conditions in this sub-paragraph are satisfied if:

- (a) the injury was sustained on or after 1 August 1964 but before 1 October 1979 (“the relevant period”); and
- (b) an award was withheld in respect of that injury on the ground that the applicant and the assailant were living together as members of the same family at the time of the incident giving rise to that injury, whether or not that was the sole ground on which the award was withheld.

(3) The conditions in this sub-paragraph are satisfied if:

- (a) the injury was sustained on or after 1 October 1979;
- (b) the incident giving rise to that injury occurred over a period (“the injury period”) which began during the relevant period and ended after that period; and
- (c) the award made in respect of that injury was reduced on the ground that, at any time falling within both the relevant period and the injury period, the applicant and the assailant were living together as members of the same family, whether or not that was the sole ground on which the award was reduced.

(4) Where an applicant who satisfies the conditions in sub-paragraph (2) or (3) makes a new application pursuant to sub-paragraph (1), an award in respect of the injury concerned may only be made in respect of any time falling within both the relevant period and the injury period, and during which the applicant and the assailant were living together as members of the same family.”.

Omission of paragraph 19

9. Omit paragraph 19.

Amendment to paragraph 20

10. In paragraph 20, omit “sustained on or after 1 October 1979”.

11. Accordingly, paragraph 20, as amended, reads as follows—

“20. An award will not be made in respect of a criminal injury if, at the time of the incident giving rise to the injury, the applicant and the assailant were adults living together as members of the same family, unless the applicant and the assailant no longer live together and are unlikely to do so again.”.

Amendment to paragraph 87

12. In paragraph 87, for “paragraph 88” substitute “paragraphs 88 and 88A”.

13. Accordingly, paragraph 87, as amended, reads as follows—

“87. Subject to paragraphs 88 and 88A, an application must be sent by the applicant so that it is received by the Authority as soon as reasonably practicable after the incident giving rise to the criminal injury to which it relates, and in any event within two years after the date of that incident.”.

Amendment to paragraph 88

14. In paragraph 88, after sub-paragraph (2), insert—

“(3) This paragraph does not apply to an applicant to whom paragraph 88A applies.”.

15. Accordingly, paragraph 88, as amended, reads as follows—

“88.—(1) Where the applicant was a child under the age of 18 on the date of the incident giving rise to the criminal injury, the application must be sent by the applicant so that it is received by the Authority:

- (a) in the case of an incident reported to the police before the applicant’s 18th birthday, within the period ending on their 20th birthday; or
- (b) in the case of an incident reported to the police on or after the applicant’s 18th birthday, within two years after the date of the first report to the police in respect of the incident.

(2) An application will not be accepted under this paragraph unless a claims officer is satisfied that the evidence presented in support of the application means that it can be determined without further extensive enquiries by a claims officer.

(3) This paragraph does not apply to an applicant to whom paragraph 88A applies.”.

Insertion of paragraph 88A

16. After paragraph 88, insert—

“88A.—(1) This paragraph applies to:

- (a) an applicant to whom paragraph 18A applies;
- (b) an applicant who:
 - (i) sustained a criminal injury on or after 1 August 1964 but before 1 October 1979;
 - (ii) was living with the assailant together as members of the same family at the time of the incident giving rise to that injury; and
 - (iii) did not make an application under this Scheme, or any Criminal Injuries Compensation Scheme in respect of that injury before the 2019 amendment date.

(2) Where an applicant to whom this paragraph applies makes an application under this Scheme, as amended on the 2019 amendment date, the application must be sent by the applicant so that it is received by the Authority within two years beginning with the day after the 2019 amendment date.

(3) But, where:

- (a) an applicant to whom this paragraph applies was a child under the age of 18 on the date of the incident giving rise to the criminal injury, and
- (b) the claims officer is satisfied that the applicant could not have made an application under this Scheme, as amended, within the time limit in sub-paragraph (2),

the applicant may make the application within two years after the date of the first report to the police in respect of the incident.”.

Amendment to paragraph 89

17. In paragraph 89, after “paragraph 87”, insert “, 88 or 88A”.

18. Accordingly, paragraph 89, as amended, reads as follows—

“89. A claims officer may extend the period referred to in paragraph 87, 88 or 88A where the claims officer is satisfied that:

- (a) due to exceptional circumstances the applicant could not have applied earlier; and
- (b) the evidence presented in support of the application means that it can be determined without further extensive enquiries by a claims officer.”.

Amendment to paragraph 141

19. In paragraph 141, at the end of sub-paragraph (a), insert “, as modified by paragraph 145 of this Scheme”.

20. Accordingly, paragraph 141, as amended, reads as follows—

“141. An application received before the day on which this Scheme comes into force will be determined:

- (a) if received on or after 3 November 2008, in accordance with the Criminal Injuries Compensation Scheme 2008 (“the 2008 Scheme”), as modified by paragraph 145 of this Scheme;
- (b) if received on or after 1 April 2001, but before 3 November 2008, in accordance with the Criminal Injuries Compensation Scheme 2001 (“the 2001 Scheme”), as modified by the 2008 Scheme;
- (c) if received on or after 1 April 1996, but before 1 April 2001, in accordance with the Criminal Injuries Compensation Scheme 1996 (“the 1996 Scheme”), as modified by the 2001 and 2008 Schemes; and
- (d) if received before 1 April 1996, in accordance with the non-statutory scheme which came into operation on 1 February 1990 (“the 1990 Scheme”).”.

Insertion of paragraphs 145 and 146

21. After paragraph 144, insert—

“145. For the purpose of paragraph 141(a), the 2008 Scheme is to be read (on and after the 2019 amendment date) as if paragraph 7(b) (the “same roof rule”) were omitted.

146. Any determination or decision to be made on or after the 2019 amendment date in relation to:

- (a) an application received on or after 27 November 2012, or
- (b) an award made pursuant to such an application,

is to be made in accordance with this Scheme as amended on the 2019 amendment date.”.

Amendment to Annex A

22. In Annex A, before the definition of “applicant”, insert—

“the 2019 amendment date” means the date on which the Criminal Injuries Compensation Scheme 2012 (Amendment) Instrument 2019 came into force;”.

23 May 2019

Edward Argar
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the instrument)

The Criminal Injuries Compensation Scheme 2012 (“the Scheme”) is made by the Secretary of State under the Criminal Injuries Compensation Act 1995 and sets out the circumstances in which a person may be eligible to receive an award of compensation if they sustain a criminal injury.

Section 11(3)(e) of the Criminal Injuries Compensation Act 1995 allows the Secretary of State to amend the Scheme in respect of the circumstances in which an award may be withheld or compensation may be reduced. The amendments which the Secretary of State proposes to be made to the Scheme are made under that provision and are as follows.

Paragraph 19 of the Scheme provided that an award of compensation could not be made to a victim in respect of a criminal injury if that injury was sustained before 1 October 1979 and, at the time of the incident giving rise to that injury, the victim and the assailant were living together as members of the same family (“the pre-1979 same roof rule”).

In the case of a criminal injury which was sustained on or after 1 October 1979, paragraph 20 of the Scheme provided that an award of compensation could not be made to a victim in respect of a criminal injury, if that injury was sustained on or after 1 October 1979 and, at the time of the incident giving rise to the injury, the victim and the assailant were adults living together as members of the same family, unless the applicant and the assailant no longer live together and are unlikely to do so again (“the post-1979 same roof rule”).

Paragraph 19 is omitted from the Scheme to ensure that those victims who did not apply for, or were refused, an award as a result of the pre-1979 same roof rule may apply, or reapply, for an award once the amendments come into force.

The amendment to paragraph 20 ensures that the post-1979 same roof rule may apply equally to all victims who sustained a criminal injury at any time since the first Criminal Injuries Compensation Scheme came into force in 1964.

Paragraphs 88 and 89 of the Scheme are amended, and paragraph 88A is inserted into the Scheme, to make provision for the time limits that apply to such applications.

Paragraphs 145 and 146 are inserted into the Scheme to ensure that the amendments to the same roof rules may apply to all applications and awards that, on the date on which the amendments come into force, are still to be determined or decided.