STATUTORY INSTRUMENTS

1988 No. 793 (N.I. 4)

NORTHERN IRELAND

Criminal Injuries (Compensation) (Northern Ireland) Order 1988

Made - - - - 27th April 1988
Coming into operation on days to be appointed under Article 1(2)

At the Court of Saint James, the 27th day of April 1988

Present,

The Counsellors of State in Council

Whereas Her Majesty in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 28th day of March 1988, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty Queen Elizabeth, The Queen Mother and His Royal Highness The Price Charles, Prince of Wales, being authorised thereto by the the said Letters Patent, and in pursuance of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974, and all other powers enabling Her Majesty, and by and with the advice of Her Majesty's Privy Council, do on Her Majesty's behalf order, and it is hereby ordered, as follows:—

Title and commencement

1.—(1) This Order may be cited as the Criminal Injuries (Compensation) (Northern Ireland) Order 1988.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"applicant" means a person who has made an application for compensation;

"compensation" means compensation under this Order;

"criminal injury" means an injury (including an injury which results in death) directly attributable to—

(a) a violent offence;

(b) the lawful arrest or attempted arrest of an offender or suspected offender, or the prevention or attempted prevention of an offence, or the giving of help to any constable, member of Her Majesty's forces or prison officer who is engaged in arresting or attempting to arrest an offender or suspected offender or in preventing or attempting to prevent an offence;

"injury" includes any disease, any impairment of a person's physical or mental condition and pregnancy;

"prescribed" means prescribed by regulations made by the Secretary of State;

"relative", in respect of a victim, means—

(a) the spouse or former spouse of the victim;

(b) any person who—

(i) was living with the victim in the same household immediately before the date on which the criminal injury was sustained; and

(ii) had been living with the victim in the same household for at least 2 years before that date; and

(iii) was living during the whole of that period as the spouse of the victim;

(c) any parent or other ascendant of the victim;

(d) any person who was treated by the victim as his parent;

(e) a child or other descendant of the victim;

(f) any person (not being a child of the victim) who, in the case of any marriage to which the victim was at any time a party, was treated by the victim as a child of the family in relation to that marriage;

(g) any person who is, or is the issue of, a brother, sister, uncle or aunt of the victim;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

"terrorism" means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear;

"traffic offence" means an offence arising from the driving or use of a motor vehicle (within the meaning of the Road Traffic (Northern Ireland) Order 1981) unless the vehicle was, at the time of the commission of the offence, being primarily used for the purpose of—

(a) causing injury; or

(b) committing, or facilitating the commission of, a violent offence; or

(c) avoiding arrest, or escaping detection, in connection with a violent offence;

"unlawful association" means any organisation which is engaged in terrorism and includes an organisation which at any relevant time is a proscribed organisation within the meaning of the Northern Ireland (Emergency Provisions) Act 1978;

"victim" means a person (including a unborn child) who has sustained a criminal injury in Northern Ireland;

"violent offence" means—

(a) any offence which was intended to cause death, personal injury or damage to property;

(b) any offence committed by causing the death or injury of any person, or damage to property, where the state of mind of the person committing the offence consisted of recklessness as to whether he caused death, personal injury or damage to property;

(c) any offence under the Explosive Substances Act 1883;

(d) any offence under the Firearms (Northern Ireland) Order 1981;

(e) riot, rout or unlawful assembly;

(f) kidnapping or false imprisonment;

(g) rape; or

(h) aiding, abetting, counselling, procuring or inciting the commission of, or attempting to commit, any offence mentioned in sub-paragraphs (a) to (g),

but does not include a traffic offence.

(3) For the purposes of this Order, an act shall be deemed to be a violent offence notwithstanding that the person performing it cannot be convicted of an offence arising out of the act because of his age or incapacity.

(4) In deducing any relationship for the purposes of this Order—

(a) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and subject thereto,

(b) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the stepchild of any person as his child; and

(c) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

(5) In paragraph (4) "adopted" means adopted in pursuance of a court order made in any part of the United Kingdom, the Isle of Man or any of the Channel Islands or by a foreign adoption within the meaning of the Adoption (Hague Convention) Act (Northern Ireland) 1969.

(6) The reference to the former spouse of the victim in the definition of "relative" in paragraph (2) includes a reference to a person whose marriage to the victim has been annulled or declared void as well as a person whose marriage to the victim has been dissolved.

(7) For the purposes of this Order a person is under a disability while—

(a) he is a minor; or

(b) he is incapable, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, of managing and administering his property and affairs.

(8) A reference in this Order to the payment of compensation or any other sum to a person includes a reference to the payment of compensation or such sum for the benefit of that person.

Payment of compensation for criminal injuries

3.—(1) Subject to and in accordance with the provisions of this Order, where a person sustains a criminal injury in Northern Ireland after the coming into operation of this Order the Secretary of State shall, on application made to him, pay compensation.

(2) Where the victim of a criminal injury survives, compensation shall only be payable—

(a) to the victim in respect of—

(i) expenses actually and reasonably incurred as a result of his injury and any other expenses resulting directly from his injury which it is reasonable and proper to make good to him out of public funds;

(ii) pecuniary loss to him as a result of total or partial incapacity for work;

(iii) other pecuniary loss resulting from his injury;

(iv) his pain and suffering and loss of amenities;

(v) certain consequences of rape in accordance with Article 9;

(b) to any person responsible for the maintenance of the victim in respect of—

(i) expenses actually and reasonably incurred as a result of the victim's injury;

(ii) pecuniary loss resulting from the victim's injury.

(3) Where the victim of a criminal injury dies as a result of the injury, compensation shall only be payable—

(a) to the victim's relatives in respect of—

(i) expenses actually and reasonably incurred as a result of the victim's injury or death and any other expenses resulting directly from the victim's injury or death which it is reasonable and proper to make good to his relatives out of public funds;

(ii) pecuniary loss resulting from the victim's injury or death;

(b) to the spouse or parents of the victim in respect of bereavement;

(c) if the victim has no relatives, to any person who has incurred expenses as a result of the victim's injury or death in respect of such expenses actually and reasonably incurred.

(4) Where the victim of a criminal injury dies otherwise than as a result of the injury, compensation shall only be payable—

(a) to the victim's relatives in respect of—

(i) expenses actually and reasonably incurred by the victim as a result of his injury;

(ii) pecuniary loss suffered by the victim as a result of his injury between the date of his injury and the date of his death;

(b) to any person who has incurred expenses as a result of the victim's injury in respect of such expenses actually and reasonably incurred.

Applications for compensation

4.—(1) An application for compensation shall be made in such manner as may be prescribed.

(2) An application for compensation may be made by any of the persons mentioned in Article 3(2) to (4) but so that—

(a) where the victim has died as a result of the criminal injury, the application may be made by the victim's spouse on behalf of both the applicant and of such children, if any, as are relatives of the victim by virtue of sub-paragraph (e) or (f) of the definition of "relative" in Article 2(2);

(b) where there is no surviving spouse of a deceased victim or the victim or other person entitled to apply for compensation is under a disability, it may be made by such person as may be prescribed.

(3) Where, by virtue of any assignment or act or event in the law, the right of any person to apply for or receive any compensation has passed to any other person, that other person, or, if he is under a disability, the person appearing to the Secretary of State to be entitled to act on his behalf, may be treated as an applicant for the purposes of any provision of this Order.

(4) Where an application for compensation is made to the Secretary of State in accordance with this Order he shall determine whether any compensation should be paid and, if so, its amount.

Exclusions from compensation

5.—(1) No compensation shall be paid unless, on a balance of probabilities, the victim sustained a criminal injury as a result of an act of another person.

(2) No compensation shall be paid in respect of an injury which is a criminal injury by virtue of sub-paragraph (a) of the definition of "criminal injury" in Article 2(2) where the victim was, at the time when the injury was sustained, living in the same household as the person or, if more than one, any of the persons responsible for causing it unless the Secretary of State is satisfied—

(a) in relation to the person responsible for causing the injury or, where more than one person is so responsible, in relation to each of the persons so responsible who, when the injury was sustained, was living in the same household as the victim—

(i) that he has been prosecuted in connection with the injury or that there is a sufficient reason why he has not been so prosecuted; and

(ii) that he and the victim have ceased to live in the same household and are unlikely to live in the same household again or that there are exceptional circumstances which prevent them from ceasing to live in the same household; and

(b) that no person who is responsible for causing the injury will benefit from the compensation if it is paid.

(3) No compensation shall be paid if the victim fails, without reasonable cause—

(a) to undergo any medical examination which he may be required by the Secretary of State to undergo; or

(b) to produce or cause or permit to be produced to the Secretary of State any medical records, X-rays or other documents relating to his injury or medical history which the Secretary of State may require to be produced; or

(c) to produce or cause or permit to be produced to the Secretary of State any medical report relating to his injury obtained by or on behalf of the victim in contemplation of or for the purpose of an application for compensation or civil proceedings.

(4) No compensation shall be paid unless the victim or, in the event of his death, one of his relatives, or, in either event, a representative of the victim or such a relative—

(a) makes forthwith to a constable or, within 48 hours from the commission of the criminal injury, to a constable at a police station in Northern Ireland, a report of the commission of the injury containing full and true disclosure of all facts, within his knowledge or belief, which might lead to the identification and apprehension of the offender or otherwise be material to the investigation of the matter by the police; and

(b) serves on the Secretary of State within 28 days from the commission of the criminal injury, a notice of intention to apply for compensation containing full and true disclosure of all facts, within his knowledge or belief, material to the determination of the application; or does so within such periods as the Secretary of State considers reasonable having regard to all the circumstances.

(5) No compensation shall be paid in respect of a criminal injury unless an application for compensation is made—

(a) within 3 months from the date on which a notice is served on the Secretary of State under paragraph (4)(b) in relation to the application unless there was reasonable cause for not making the application within that period; and

(b) within 3 years from the date on which the criminal injury was sustained.