STATUTORY INSTRUMENTS

1977 No. 1248 (N.I. 15)

Criminal Injuries (Compensation) (Northern Ireland) Order 1977

- - - - - - *[26th July 1977]*

Order rep. with saving, 1988 NI 4

Title and commencement

1. This Order may be cited as the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 … *Commencement* …

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;

"chief constable" includes an assistant chief constable and a deputy chief constable of the Royal Ulster Constabulary;

"compensation" means compensation under this Order;

"the court" means the county court;

"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;

"dependants", in respect of a deceased victim, means such of the relatives of the victim as were wholly or substantially dependent upon his income at the time of his death or would have been so dependent but for any incapacity due to the criminal injury from which the death resulted; and, for the purposes of this definition, a child of a victim conceived prior to the criminal injury which caused the victim's death, but born after that death, shall be deemed to have been wholly dependent upon the victim's income at the time of that death;

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

"motor vehicle" has the same meaning as in the Road Traffic [F1 (Northern Ireland) Order 1981];

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

"related offence" means—

(a) aiding, abetting, counselling, procuring or inciting the commission of a violent offence;

(b) attempting to commit a violent offence;

"relative", in respect of a victim (including a victim who is illegitimate), means his or her spouse (including any wife by any former marriage), parent, grandparent, great-grandparent, step-father, stepmother, child, grandchild, great-grandchild, brother, sister, half-brother, half-sister or spouse's parent;

"representative", in relation to an unborn child, means a relative, lawful guardian or person having the care of the child;

"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 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 1973 or any Act re-enacting that Act (whether with or without modifications);

"victim" means a person (including an 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 [F2 Firearms (Northern Ireland) Order 1981];

(e) riot, rout or unlawful assembly;

(f) kidnapping or false imprisonment; or

(g) a related offence;

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) For the purposes of this Order—

(a) "child" includes stepchild, illegitimate child,F3... and, in the case of a deceased victim, a person of whom the victim was the lawful guardian;

(b) an illegitimate child shall be treated as the legitimate child of his mother and natural father; and

Sub#para. (c) rep. by 1987 NI 22

Paras. (5), (6) rep. by 1987 NI 22

Annotations:
F1 1981 NI 1
F2 1981 NI 2
F3 1987 NI 22

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 on or after the commencement of this Order the Secretary of State shall, on application made to him, pay compensation—

(a) to or for the benefit of the victim; or

(b) where the compensation is in respect of pecuniary loss suffered or expenses incurred, as a result of the victim's injury, by any person responsible for the maintenance of the victim, to that person; or

(c) where the victim has died as a result of the injury—

(i) to or for the benefit of the victim's dependants or any one or more of them; or

(ii) if the victim has no dependants and the compensation is in respect of reasonable expenses necessarily incurred as a result of his death, to the person who incurred those expenses; or

(iii) to any relative of the victim in respect of**[**F4 pecuniary loss which has been or may be suffered by him as a result of the victim's death or in respect of**]** any reasonable expenses necessarily incurred or to be so incurred by him as a result of the victim's death; or

(d) where the victim has died otherwise than as a result of the injury—

(i) in respect of pecuniary loss suffered by the victim between the date of the injury and the date of the death, to the victim's dependants;

(ii) in respect of reasonable expenses necessarily incurred by any person in connection with the injury, to that person.

(2) No compensation shall be paid—

(a) unless, on a balance of probabilities, the victim sustained a criminal injury as a result of an act of another person; or

(b) if the victim was, at the time when the criminal injury was sustained, living with the offender as his wife or her husband or as a member of the same household as the offender; or

(c) if the victim fails, without reasonable cause—

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

(ii) 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

(d) unless the victim, or in the event of his death, one of his dependants, or, in either event, a representative of the victim or such a dependant—

(i) makes forthwith to a constable or, within forty-eight 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; and

(ii) serves on the Secretary of State within twenty-eight 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.

(3) Where the victim is an unborn child, paragraph (2)(*d*)(ii) shall have effect with the substitutiton for the words from "twenty-eight" to "injury" of the words " three months from the date of birth of the child ".

Para.(4) repeals 1968 c.9 (NI)

Annotations:
F4 1982 NI 22

Applications for compensation

4.—(1) An application for compensation—

(a) shall be made in such manner as may be prescribed; and

(b) must be so made within three months from the date on which a notice is served on the Secretary of State under Article 3(2)(*d*)(ii) in relation to the application unless there was reasonable cause for not making the application within that period.

(2) Where the victim is an unborn child, paragraph (1) shall have effect with the substitution for the words from "three months" to "application" of the words " six months from the date of birth of the child ".

(3) Any such application may be made by any of the persons mentioned in Article 3(1) 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 the victim's dependants;

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

(4) Where any such application is made to the Secretary of State in accordance with this Order, he shall determine the amount (if any) of compensation payable to the applicant.

(5) A determination under paragraph (4) shall specify the amount (if any) of compensation payable in respect of—

(a) pecuniary loss;

(b) expenses; and

(c) other matters.

Assessment of compensation

5.—(1) Compensation shall, subject to the following provisions of this Article, be payable in respect of any one or more of the following matters only—

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

(b) pecuniary loss to the victim as a result of total or partial incapacity for work;

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

(d) any other expenses resulting directly from the victim's injury or death which it is reasonable and proper to make good to the victim or his dependants out of public funds;

(e) pain and suffering of, and loss of amenities by, the victim.

(2) In determining whether any compensation should be paid and, if so, its amount, the Secretary of State shall have regard to all such circumstances as are relevant and, without prejudice to the generality of the foregoing, shall have regard to any provocative or negligent behaviour of the victim which contributed, directly or indirectly, to the criminal injury.

(3) The Secretary of State, in determining the amount of compensation, shall deduct from the amount which, but for this paragraph, would be payable—

(a) any sums paid to or for the benefit of the victim or any of his dependants, by way of compensation or damages from the offender or any person on the offender's behalf, consequent on the criminal injury or on death resulting therefrom; and

(b) any pension, gratuity or social security benefit payable to or for the benefit of the victim or any of his dependants which has been or will be paid consequent on the criminal injury or on death resulting therefrom.

(4) Any sum required to be deducted under paragraph (3) shall be deducted from the amount of any compensation in respect of pecuniary loss and the balance (if any) of that sum shall be deducted first from the amount of any compensation in respect of expenses and then from the amount of any other compensation.

(5) For the purposes of paragraph (3)—

(a) social security benefit shall be deemed to be payable if it would be payable but for the wilful failure at any time of the victim to pay contributions which he was liable to pay; and

(b) social security benefit is consequent on a criminal injury or on a death resulting from such an injury if, but for the criminal injury or that death, the benefit would not otherwise have been paid or be payable at the same time or to the same extent as it was or will be paid following the death or injury;

(c) a pension or gratuity shall not be taken into account unless it is payable by or on behalf of the Crown or the employer of the victim or by any person with whom the employer has made any contract or arrangement.

(6) In determining the amount of compensation payable to the widow of a victim, her prospects of remarriage shall be disregarded.

(7) In this Article—

"the Crown" means the Crown in right of Her Majesty's government in the United Kingdom or in Northern Ireland;

"pension" includes any payment of a lump sum in respect of a person's employment;

"social security benefit" means—

(a) benefit under the Social Security (Northern Ireland) Act 1975 , the**[**[F5] Supplementary Benefits (Northern Ireland) Order 1977**]** or the Family Income Supplements Act (Northern Ireland) 1971 or any corresponding enactment in force in Great Britain;

(b) any similar benefit under the law of any country, state or territory whatsoever.