Changes to legislation: *Criminal Damage (Compensation) (Northern Ireland) Order 1977 is up to date with all changes known to be in force on or before 07 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1977 No. 1247 (N.I. 14)

Criminal Damage (Compensation) (Northern Ireland) Order 1977

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

Modifications etc. (not altering text)

C1 Order: functions transferred from Secretary of State to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(1)(2), **Sch. 1** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Title and commencement

1.—(1) This Order may be cited as the Criminal Damage (Compensation) (Northern Ireland) Order 1977.

(2) *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;

"damage", in relation to property, includes the total or partial destruction of, and any injury to, property;

"prescribed" means prescribed by regulations made under Article 21(2);

"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;

"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).

F1(3) . . . . . .

F1 Art. 2(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 72, **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

Compensation to be payable in accordance with this Order

3.—(1) Subject to and in accordance with the provisions of this Order, compensation shall be payable by the Secretary of State for damage caused as a result of an act committed on or after 1st April 1978 to any property or for the unlawful removal on or after that date of property in the circumstances described in Article 6.

(2) The Criminal Injuries to Property (Compensation) Act (Northern Ireland) 1971 shall cease to have effect, except in relation to any damage (within the meaning of that Act) caused as a result of an act committed before, or in relation to property unlawfully removed before, 1st April 1978.

Compensation for damage to agricultural buildings and property

4. Where damage has been maliciously or wantonly caused to—

(a) any building which is an agricultural building within the meaning of the Rates (Northern Ireland) Order 1972 F2; or

(b) any of the following kinds of property, found present or growing on, or unlawfully removed from, any land which is agricultural land within the meaning of the Agriculture Act (Northern Ireland) 1949 or found present in, or unlawfully removed from, any building to which paragraph (*a*) applies, that is to say—

(i) any livestock,

(ii) any agricultural or dairy machinery and utensils, implements and utensils of husbandry, any harness, fuel oil or spirit, and any power or horse-drawn farm vehicles and trailers (including farm vehicles and trailers constructed or adapted for the conveyance of goods),

(iii) any fruit trees or growing crops,

(iv) any corn, hay, straw, flax, wool, potatoes or other agricultural produce, feeding stuffs, fertilizers or insecticides,

(v) any cut turf intended for use as fuel,

the Secretary of State shall, subject to the provisions of this Order, pay compensation to any person having an estate or interest in that building or property who suffers loss from that damage.

F2 1977 NI 28

[F3Compensation for damage to certain buildings used or made available for use for charitable purposes

4A.—(1) Where damage has been unlawfully, maliciously or wantonly caused to any building to which this Article applies, the Secretary of State shall, subject to the provisions of this Order, pay compensation to any person having an estate or interest in that building who suffers loss from that damage.

(2) This Article applies only in respect of damage caused as a result of an act committed after the date on which Article 3 of the Criminal Damage (Compensation) (Amendment) (Northern Ireland) Order 2009 comes into operation.

(3) This Article applies to any building constituting or forming part of a hereditament which is distinguished in a valuation list maintained under Article 40(1) of the Rates (Northern Ireland) Order 1977 (NI 28) as exempt to any extent by virtue of Article 41(2)(e) of that Order, or as exempt by virtue of Article 41A of that Order, and which either—

(a) is shown in the list as being so distinguished at the time when the act causing the damage is committed, and does not cease to be so distinguished by alteration of the list in consequence of an application pursuant to Article 49(1) of that Order served on the district valuer before that time; or

(b) is shown in the list as being so distinguished by subsequent alteration of the list in consequence of such an application served on the district valuer before that time.**]**

F3 Art. 4A inserted (19.4.2009) by Criminal Damage (Compensation) (Amendment) (Northern Ireland) Order 2009 (S.I. 2009/884 (N.I. 1)), arts. 1(3), **3**; S.R. 2009/169, **art. 2**

Compensation for damage to other property

5.—(1) Where damage has been unlawfully, maliciously or wantonly caused to any property—

(a) by any three or more persons unlawfully, riotously or tumultuously assembled together; or

(b) as a result of an act committed maliciously by a person acting on behalf of or in connection with an unlawful association;

the Secretary of State shall, subject to the provisions of this Order, pay compensation to any person having an estate or interest in that property who suffers loss from that damage.

(2) Where the Chief Constable is of the opinion that any act was committed maliciously by a person acting on behalf of or in connection with an unlawful association he shall issue a certificate in the form set out in the Schedule, or in such other form as may be prescribed, to any person who requests him to issue such a certificate for the purposes of an application by that person for compensation for loss resulting from damage alleged to have been caused by an act so committed.

(3) A certificate purporting to be issued by the Chief Constable under paragraph (2) shall, until the contrary is proved, be evidence that the act therein referred to was committed maliciously by a person acting on behalf of or in connection with an unlawful association.

(4) If the Chief Constable certifies that it is not in the public interest to disclose the information on which any certificate issued under paragraph (2) is based, that information shall not be disclosed in any court in proceedings under this Order.

Compensation for unlawful removal of property

6. Where—

(a) three or more persons who are tumultuously and riotously assembled together unlawfully, maliciously or wantonly cause damage, the aggregate value of which exceeds**[**F4 £200**]**, to a building or to property within the curtilage of a building; and

(b) in the course of the riot a person unlawfully removes any property from such a building;

the Secretary of State shall, subject to the following provisions of this Order, pay compensation to any person having an interest in the property removed who suffers loss as the result of the unlawful removal.

F4 SR 1990/25

Preliminary notice of damage or removal

7.—(1) Subject to the provisions of this Article, an applicant shall not be entitled to compensation unless he or some other person having an estate or interest in the property to which the applicant's claim to such compensation relates has, within ten days from the day on which the act giving rise to that claim was committed, served or caused to be served a preliminary notice of intention to apply for such compensation on—

(a) the Secretary of State;

(b) the divisional commander of police for the police division in which the damage or removal giving rise to that claim or the greater part of that damage or removal occurred; and

(c) such other persons, if any, as may be prescribed.

(2) A preliminary notice shall be in such form as may be prescribed and shall fully and truthfully disclose the following facts, in so far as they are within the knowledge and belief of the person by or on behalf of whom the notice is served, that is to say—

(a) the place, date and time at which the act giving rise to the claim to compensation was committed; and

(b) the nature of the property damaged or removed.

(3) Subject to Article 15(1), the Secretary of State may, upon a request being submitted to him in writing within six months of the commission of the act giving rise to the claim for compensation, extend the period within which a preliminary notice may be served in respect of that claim.

Applications for compensation

8.—(1) An application for compensation shall be made in such manner as the Secretary of State may direct and shall be so made within four months (or such longer period not exceeding twelve months as the Secretary of State, or on an appeal under Article 15(1) the county court, may in any particular case allow) from the date of service upon the Secretary of State of a preliminary notice under Article 7(1).

(2) The Secretary of State may require to be submitted to him, within such period as he may specify, such further information in relation to the application as he thinks fit and where the applicant fails to submit that information within that period the Secretary of State may determine the application forthwith and Article 15(1) shall apply to such a determination.

(3) Where, by virtue of any assignment or act or event in 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 any legal 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.

Assessment of compensation

9.—(1) In determining whether any compensation should be paid in respect of any loss 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—

(a) any failure on the part of the applicant to take all reasonable precautions to reduce or avoid the loss;

(b) any failure on the part of the applicant to comply with any statutory provision relating to the safety of property;

(c) any unlawful purpose for which the property was being used and any unlawful use of the property (including its use for the unlawful sale and consumption of intoxicating liquor or, where the property is a motor vehicle, its use without there being in force in respect of that vehicle a licence under**[**F5 the Vehicle Excise and Registration Act 1994**]**, by the applicant,

or by any other person with his consent whether express or implied, immediately before the occurrence of the act giving rise to the claim for compensation in respect of that property;

(d) any provocative or negligent behaviour of the applicant which contributed, directly or indirectly, to the loss or increased the chances of its being sustained.

(2) To enable him to determine for the purposes of paragraph (1)(*a*) whether the applicant failed to take all reasonable precautions to reduce or avoid loss, the Secretary of State may serve a notice on the applicant requiring him to state the precautions which he took to reduce or avoid the loss.

F5 1994 c. 22

Reduction or exclusion of compensation

10.—(1) Compensation shall not be payable in respect of—

(a) any loss suffered by reason of the total or partial destruction or unlawful removal of any coins, Treasury or bank notes, or currency of any country, any postal orders or post office money orders or any postage or other adhesive stamps;

(b) any loss suffered by reason of damage of any kind to, or unlawful removal of, articles of personal ornament (including watches and jewellery) unless kept by the owner as part of his stock in trade; or

(c) any loss if, and to the extent which, reparation or damage therefor has previously been recovered or is recoverable under any other statutory provision or has been recovered under the common law.

(2) Compensation shall not be payable for any loss where the person suffering the loss connived at, assisted in or actively and willingly facilitated the occurrence of or contributed to the damage or unlawful removal from which the loss arose or was, at or about the time of that damage or unlawful removal, associated or combined or in league with the person or persons causing it.

(3) Without prejudice to Article 9(1) compensation shall not be payable to or for the benefit of any person—

(a) who has been a member of an unlawful association at any time whatsoever, or is such a member; or

(b) who has been engaged in the commission, preparation or instigation of acts of terrorism at any time whatsoever, or is so engaged.

(4) Compensation shall not be payable in respect of an incorporeal hereditament (including an easement or profit or other right) or a loss of mere pleasure or amenity.

(5) Compensation shall not be payable in respect of so much of any loss as is attributable to any neglect or failure on the part of the person suffering that loss to take reasonable steps to minimise the extent thereof.

(6) Compensation shall not be payable in respect of any loss suffered by an applicant arising out of a particular act if the amount of that loss does not exceed**[**F6 £200**]**.

(7) Where any loss arising out of a particular act exceeds**[**F6 £200**]**, the compensation payable in respect of that loss shall be reduced by that sum, so however that no applicant may suffer a reduction in respect of more than one claim for the same property as a result of acts occurring during any period of twelve months.

(8) The Secretary of State may withhold payment of all or part of compensation until the applicant has complied with all reasonable requests for information and assistance which might lead to the identification and apprehension of the person or persons who committed the act giving rise to the claim for compensation.