

STATES OF JERSEY



CRIMINAL INJURIES COMPENSATION SCHEME: REVISED SCHEME

Lodged au Greffe on 8th July 2009
by the Minister for Home Affairs

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 4th December 1990 in which they agreed to establish a scheme to provide compensation for victims of crimes of violence to replace the Scheme set out in the Act of the States dated 12th May 1970; and

to approve the revised Criminal Injuries Compensation Scheme as set out in the attached Appendix to the Report of the Minister for Home Affairs dated 8th July 2009.

MINISTER FOR HOME AFFAIRS

REPORT

The current Jersey Criminal Injuries Compensation Scheme came into force on 1st May 1991 as a result of an Act of the States of the 4th December 1990, “establishing a Scheme to provide compensation for victims of crimes of violence to replace the Scheme set out in the Act of the States dated 12th May 1970”.

Amendments to the Scheme have previously been published in the R&O series, notwithstanding that the Scheme is not legislation. However, it is felt that this should, henceforth, be rectified, and that the simplest way is for the States to be asked to approve the entire Scheme in its amended form whenever amendments are proposed. This process can then be repeated when and if future amendments are required. One benefit is that the updated text of the Scheme is always available in the proposition document.

The Criminal Injuries Compensation Board have generally been satisfied with the workings of the 1990 Scheme (as previously amended), but have recommended a number of amendments which it feels are desirable in order to improve the way in which the Scheme operates. These amendments have been incorporated into the Scheme, and the principal amendments are as follows –

- (a) to increase the number of persons on the Board administering the Scheme from 10 to 12, with 3 of these, instead of the current 2, being advocates or solicitors; (Article 4(a)).

The increase in the number of members of the Board will enable the workload to be more evenly spread amongst the members. It is not envisaged that the increase will result in any increased expenditure to the Scheme, as members are paid by the hour; the existing level of expenditure would be spread amongst a greater number of members.

- (b) to increase from £750 to £1,500 the amount below which no award will be made under the Scheme (except in the case of funeral expenses); (Article 14).

The amount of any compensation to be awarded to an applicant is assessed on the basis of ‘Common Law’ damages, subject always to the other provisions of the Scheme. However, in order to maximize the limited resources available to the Board, a lower limit is imposed, which means that when injuries sustained are of a comparatively minor nature then no award is made. The current minimum is £750, which was set in 1998. An award in that figure could relate to injuries such as cuts, bruises or sprains and in a few days loss of earnings. It is therefore proposed to double the figure to £1,500.

- (c) to restrict the loss of earnings that may be taken into account to not more than 1.5 times a figure based on the Jersey Index of Average Earnings (Article 24(a)).

In its calculation of loss of earnings, the Scheme currently provides that “*the rate of net loss earnings or earning capacity to be taken into account shall not exceed one and a half times the gross average industrial earnings at the date of assessment (as published by the United Kingdom Department of Employment Gazette and as adjusted as considered appropriate by the Board).*” As this ‘Gazette’ is no longer published,

rather than use United Kingdom data on gross average industrial earnings the Board believes that it would be preferable instead to use Jersey figures as even the use of the U.K. Annual Survey of Hours and Earnings (ASHE) renders the Jersey Criminal Injuries Compensation Scheme out of kilter with the equivalent U.K. Scheme. The Statistics Unit compiles earnings data in Jersey every year - collected by way of a survey of the private sector; and a census of the public sector - in order to determine the Jersey Average Earnings Index. The mean ('average') earnings of full-time equivalent (F.T.E.) employees is published regularly and the Board considers that this would be an improvement upon using U.K. figures. This amendment to the Scheme addresses the use of this Jersey-specific data.

- (d) to provide that an award of compensation by the Board lapses if not accepted within 6 months unless exceptional circumstances exist.

Following a States Treasury Internal Audit of the Scheme undertaken as part of the 2008 Internal Audit Plan, whilst satisfied that the Scheme was being administered in an efficient manner, it was recommended that a time limit for accepting awards should be specified, failing which the awards should be written back as income. It had been noted that the Scheme did not prescribe such a time limit within which awards should be claimed by applicants, and that as at June 2008, awards amounting to over £22,000 were lying unclaimed. As some of these had been lying unclaimed since 1998, it was considered that steps should be taken to rectify such a situation for the future. Consequently, it is proposed that awards should be accepted within 6 months of their notification to applicants unless exceptional circumstances exist.

References throughout the Scheme to Committees have been changed to references to appropriate Ministers and minor changes have been made for the sake of consistency within the original Act.

Financial and manpower implications

There are no additional financial or manpower implications arising from these amendments, other than in respect of the proposed requirement that awards should be claimed within 6 months, whereby an amount representing current awards older than 6 months will be written back to the budget of the Criminal Injuries Compensation Scheme.

CRIMINAL INJURIES COMPENSATION SCHEME

<i>SECTION A</i>	6
THE SCHEME.....	6
Administration.....	6
<i>SECTION B</i>	7
Scope of the Scheme	7
<i>SECTION C</i>	10
PROVISIONS AS TO COMPENSATION.....	10
Basis of compensation.....	10
Limits of Compensation	10
<i>SECTION D</i>	12
PROCEDURE AND IMPLEMENTATION.....	12
Procedure for determining applications	12
Implementation of the Scheme.....	14

CRIMINAL INJURIES COMPENSATION SCHEME

SECTION A

THE SCHEME

Administration

1. The Criminal Injuries Compensation Scheme (“the Scheme”) will be administered by the Criminal Injuries Compensation Board (“the Board”), assisted by such staff as the Minister for Home Affairs (“the Minister”) shall, with the consent of the Chief Minister, appoint.
2. The members of the Board shall be appointed by the Minister and shall hold office for five years in the first instance, and their appointment shall be renewable for such periods as the Minister may think appropriate.
3.
 - (a) A person may at any time resign his office as Chairman or a member of the Board by giving the Minister notice in writing to that effect.
 - (b) The Minister may at any time remove a person from office as a member of the Board if the Minister is satisfied as to any of the following matters in relation to the person –
 - (i) he has been convicted of an offence punishable by imprisonment;
 - (ii) he has become bankrupt;
 - (iii) he is incapacitated by physical or mental illness; or
 - (iv) he is otherwise unfit to perform his duties.
4.
 - (a) The Board will consist of not more than twelve members, not less than three of whom shall be advocates or solicitors of the Royal Court of not less than five years’ standing.
 - (b) The Minister shall appoint one of the members who is an advocate or solicitor of not less than five years’ standing as Chairman of the Board.
 - (c) Three members of the Board, including a member who is an advocate or solicitor of not less than five years’ standing, shall form a quorum of the Board and the Chairman shall preside unless for any reason he is unable to attend, in which case the members present shall select one of their number to preside.
 - (d) The functions of the Board shall not be invalidated by reason of a vacancy in its membership.

5. A person who is a member of the States is not eligible for appointment as a member of the Board and a member of the Board will vacate his office on becoming a member of the States.
6. All payments made and expenses incurred in carrying out the Scheme will be paid out of the general revenues of the States.
7. The members of the Board will be entitled to receive such remuneration and allowances as the Minister may determine.
8. The Board is entirely responsible for deciding what compensation should be paid in individual cases and (subject to Article 22) its decisions will not be subject to appeal or administrative review.
9. The Minister shall keep the working of the Scheme under review and, after consultation with the Board, shall submit an annual report on the operation of the Scheme, together with a statement of accounts, to the States.

SECTION B

Scope of the Scheme

10. (a) Subject to paragraph (b) of this Article, the Board may make *ex gratia* payments of compensation in any case where the applicant or, in the case of an application by a spouse or dependent (see Articles 25 and 26 below), the deceased –
 - (i) sustained, in the Island or on a Jersey ship, personal injury directly attributable to a crime of violence (including arson or poisoning) or the apprehension or attempted apprehension of an offender or a suspected offender or to the prevention or attempted prevention of an offence or to the giving of help to a police officer who is engaged in any such activity, or
 - (ii) sustained personal injury directly attributable to a crime of violence (including arson or poisoning) in respect of which a court in the Island has jurisdiction by virtue of section 686 or 687 of the Merchant Shipping Act 1894 or such enactments as from time to time replace them;
- (b) Where the victim and any person responsible for the injuries (whether that person actually inflicted them or not) were living in the same household at the time of injury as members of the same family, compensation will be paid only where –
 - (i) the person responsible has been prosecuted in connexion with the offence, except where the Board considers that there are practical, technical or other good reasons why a prosecution has not been brought; and
 - (ii) in the case of violence between adults in the family the Board is satisfied that the person responsible and the applicant

stopped living in the same household before the application was made and seem unlikely to live together again; and

- (iii) in the case of an application for compensation by or on behalf of a minor, the Board is satisfied that it would not be against the minor's interest to make a full or reduced award.

For the purposes of this paragraph a man and a woman living together as husband and wife shall be treated as members of the same family.

- (c) For the purposes of this Scheme "personal injury" includes any disease, any harm to a person's physical or mental condition and pregnancy and any reference to "injury" shall be construed as a reference to personal injury.
- (d) For the purposes of this Scheme "Jersey ship" means any vessel used in navigation which is owned wholly by persons of the following descriptions –
 - (i) British citizens resident in the Island, or
 - (ii) bodies corporate incorporated under the laws of the Island and having their principal place of business in the Island.

- 11. Subject to Article 12, applications for compensation shall be made, in the form issued by the Board, within three years of the incident giving rise to the injury.
- 12. The Chairman may, if he is satisfied that there are good reasons so to do, waive the time limit for making an application, but a decision by the Chairman not to waive the time limit will be final.
- 13. In considering for the purposes of the Scheme whether any act is a criminal act, any immunity at law of an offender attributable to his youth or insanity or other reason, will be left out of account.
- 14. Compensation will not be payable unless the Board is satisfied that the injury was one for which the total amount of compensation payable after deduction of social security benefits, but before any other deductions under the Scheme, would be not less than £1,500. The application of the minimum level shall not, however, affect the payment of funeral expenses under Article 25.
- 15. The Board may withhold or reduce compensation if it considers that –
 - (a) the applicant has not taken, without unreasonable delay, all reasonable steps to inform the police, or any other authority considered by the Board to be appropriate for the purpose, of the circumstances of the injury and to co-operate with the police or other authority in bringing the offender to justice; or
 - (b) the applicant has failed to give all reasonable assistance to the Board or other authority in connexion with the application; or

(c) having regard to the conduct of the applicant before, during or after the events giving rise to the claim or to his character and way of life – and in applications under Articles 25 and 26, to the character, conduct and way of life of the deceased and of the applicant – it is inappropriate that a full award, or any award at all, be granted, and

furthermore, compensation will not be payable –

(d) in the case of an application under Article 10(a)(i), if –

(i) the personal injury is directly attributable to the apprehension or attempted apprehension of an offender or a suspected offender or the prevention or attempted prevention of an offence or the giving of help to a police officer who is engaged in any such activity, and

(ii) the injury was sustained accidentally,

unless the Board is satisfied that the applicant was at the time taking an exceptional risk that was justified in all the circumstances.

16. In order to determine whether there was any responsibility, either because of provocation or otherwise, on the part of the victim, the Board will scrutinise with particular care all applications in respect of sexual offences or other offences arising out of a sexual relationship or where the relationship between the victim and the offender is such that the offender might benefit from any award of compensation made to the applicant and in any such case the Board shall especially have regard to any delay that has occurred in submitting the application and compensation will not be payable unless the Board is satisfied that the offender will not benefit from an award.

17. If in the opinion of the Board it is in the interests of the applicant so to do, whether or not he is a minor or a person under any other incapacity, the Board may pay the amount of any award to any trustee or trustees to hold on such trusts for the benefit of all or any of the following persons, that is to say, the applicant any spouse, widow, widower, relatives and dependants of the applicant and with such provision for their respective maintenance, education and benefit and with such powers and provisions for the investment and management of the fund and for the remuneration of the trustee or trustees as the Board shall think fit. Subject to the provisions of this Article, the Board will have a general discretion in any case in which it has awarded compensation to make special arrangements for its administration. In this Article, “relatives” means all persons claiming descent from the applicant’s grandparents and “dependants” means all persons who in the opinion of the Board are dependent on him wholly or partially for the provision of the ordinary necessities of life.

18. The Board will consider applications for compensation arising out of acts of rape and other sexual offences in respect of pain, suffering and shock and in respect of loss of earnings due to consequent pregnancy, and, where the victim is ineligible for a maternity grant under the Jersey social security scheme or any similar scheme in operation elsewhere, in respect of the expenses of

childbirth. Compensation will not be payable for the maintenance of any child born as a result of a sexual offence, except that where a woman is awarded compensation for rape the Board may award an additional sum, not exceeding £25,000, in respect of each child born alive having been conceived as a result of the rape whom the applicant intends to keep.

19. No payment under this Scheme shall be made in respect of personal injury attributable to a motoring offence except where such injury is due to a deliberate attempt to run the victim down.

SECTION C

PROVISIONS AS TO COMPENSATION

Basis of compensation

20. Subject to the other provisions of this Scheme, compensation shall be assessed on the basis of common law damages and shall be paid as a lump sum payment, although the Board may make alternative arrangements in accordance with Article 17.
21. (a) More than one payment may be made where an applicant's eligibility for compensation has been established but a final award cannot be calculated in the first instance by reason of the fact that only a provisional medical assessment can be given.
- (b) In such a case as is referred to in paragraph (a) above, the Board may decide to make a reduced award, increase any reduction already made or refuse to make any further payment at any stage before receiving notification of acceptance of the final award.
22. Notwithstanding Article 8, the Board may reconsider a case after a final award of compensation has been accepted where there has been such a serious change in the applicant's medical condition that injustice would occur if the original assessment of compensation were allowed to stand, or where the victim has since died as a result of his injuries.
23. A case will not be reconsidered more than three years after the date of the final award unless the Board is satisfied that, on the basis of evidence presented with the application for reconsidering the case, the renewed application can be considered without a need for extensive enquiries. A decision by the Board that a case may not be reconsidered will be final.

Limits of compensation

24. Compensation will be limited as follows –
- (a) the rate of net loss of earnings, or earning capacity, per week to be taken into account shall not exceed 1.5 times the mean earnings per week of full-time equivalent employees in Jersey across all sectors at the date of assessment (as published in the Jersey Index of Average Earnings);

- (b) there shall be no element of comparable or exemplary or punitive damages;
 - (c) the total award shall not in any case exceed £100,000.
- 25.** Where the victim has died in consequence of the injury, no compensation other than the funeral expenses will be payable for the benefit of his estate, but the Board may consider applications from his spouse and dependants. For this purpose, compensation will be payable, in accordance with the other provisions of this Scheme to any person entitled to claim under the Fatal Accidents (Jersey) Law 1962 and to a person to whom the deceased was alleged to be married by habit or repute and who was living with the deceased in the same household during the whole of the period of two years immediately preceding the date of the death. Funeral expenses to an amount considered by the Board to be reasonable will be paid by the Board in appropriate cases even where the person bearing the cost of the funeral is otherwise ineligible to claim under this Scheme. Applications may be made under this paragraph where the victim has died from his injuries even if an award has been made during his lifetime. Such cases will lie subject to the conditions set out in Article 22 for the re-opening of cases and compensation payable to (the applicant will be reduced by the amount paid to the victim.
- 26.** Where (the victim has died otherwise than in consequence of the injury, (the Board may make an award in respect of loss of wages, expenses and liabilities incurred before his death as a result of the injury whether or not application for compensation in respect of the injury has been made before his death.
- 27.** Compensation will be payable for loss or damage to clothing and other personal adjuncts arising from the injury, but in respect of loss or damage to jewellery, watches or rings the amount awarded shall not exceed £150. Save as aforesaid, compensation will not be payable for loss of or damage to property.
- 28.** Compensation will be reduced by the full value of any payment that, as a result of the injury or death, the person to whom the award is made has received or is or will be entitled to receive by way of –
- (a) benefits payable under the Social Security (Jersey) Law 1974 (but not maternity grant or maternity allowance);
 - (b) social security benefits (but not maternity grant or maternity allowance), compensation awards or similar payments from the funds of other countries;
 - (c) payments under insurance arrangements, except arrangements as excluded in Article 29.
- 29.** Insurance effected, paid for and maintained by the personal income of the injured person, or in the case of a minor by his parent, is excluded from the insurance arrangements referred to in Article 28.

30. In assessing the amount of an award, account will be taken of any income tax liability likely to reduce the value of such benefits and, in the case of an application under Article 25, the value of such benefits will not be reduced to take account of prospects of remarriage. If, in the opinion of the Board, an applicant may be eligible for such benefits as are mentioned in Article 28, the Board may refuse to make an award until the applicant has taken such steps as the Board considers reasonable to claim them.
31. Where the victim is alive compensation will be reduced to take account of any pension accruing as a result of the injury. Where the person has died in consequence of the injury, and any pension is payable for the benefit of the person to whom the award is made as a result of the death of the victim, the compensation will similarly be reduced to take into account the value of that pension. Where such pensions are taxable, one half of their value will be deducted; where they are not taxable, e.g. where a lump sum payment not subject to income tax is made, they will be deducted in full. For the purposes of this Article, "pension" means any payment payable as a result of the injury or death, in pursuance of any pension or other rights whatsoever connected with the victim's employment, and includes any gratuity of that kind and similar benefits payable under insurance policies paid for by employers. Pension rights accruing solely as a result of payments by the victim or a dependent will be disregarded.
32. When a civil court has given judgment providing for payment of damages or a claim for damages has been settled on terms providing for payment of money, or when compensation has been ordered by a criminal court, in respect of personal injury, compensation by the Board in respect of the same injuries will be reduced by the amount of any payment received under such an order or settlement. When a civil court has assessed damages, as opposed to giving judgement for damages agreed by the parties, but the person entitled to such damages has not yet received the full sum awarded, he will not be precluded from applying to the Board, but the Board's assessment of compensation will not exceed the sum assessed by the court. Furthermore, a person who is compensated by the Board will be required to undertake to repay the Board from any damages, settlement or compensation he may subsequently obtain in respect of his injuries. In arriving at its assessment of compensation, the Board will not be bound by any finding of contributory negligence by any court, but will be entirely bound by the terms of this Scheme.

SECTION D

PROCEDURE AND IMPLEMENTATION

Procedure for determining applications

33. Every application will be made to the Board as soon as possible after the event on a form obtainable from the offices of the Board which may, where necessary, seek further information as to the relevant circumstances.
34. Every application will be referred to two members of the Board, at least one of whom is an advocate or solicitor of not less than five years standing, selected by the Chairman. They will consider the information and statements which

have been obtained, may request the applicant to attend upon them for the purpose of viewing his injuries and will make an initial decision on the amount of any compensation to be awarded, unless, either because they are unable to agree or for any other reason, they decide that the application should be referred to the Board for a decision.

- 34A.** The applicant will be informed as soon as practicable whether or not an initial decision has been reached and if it has and an award is made he will be given a breakdown of the assessment of compensation, unless the Board considers this inappropriate, and if the decision is to refuse or reduce an award the reasons for this decision will be given.
- 34B.** If an application is referred to the Board under Article 34, the Board, but not the members to whom the application was first referred, will consider the application at a hearing as if the hearing was at the request of the applicant.
- 35.** If the applicant is dissatisfied with the initial decision, he will be entitled to a hearing before the Board at which the members who made the initial decision will not be present.
- 36.** An application for a hearing must be made within three months of notification of the initial decision; however the Chairman may waive this time limit where an extension is requested with good reason within the three month period, or where it is otherwise in the interests of justice to do so.
- 37.** A decision of the Chairman not to waive the time limit will be final.
- 38.** It will be for the applicant to make out his case at the hearing, and where appropriate this will extend to satisfying the Board that compensation should not be withheld or reduced under the terms of Articles 15 or 16. The applicant may be assisted by a person of his own choice but the Board shall not be liable, and will not pay, the costs of legal representation. However, the Board will have a discretion to pay the expenses of the applicant and witnesses at a hearing. The Board may be assisted by a person of its choice.
- 39.** The applicant, the Board and any person assisting either of them will be able to call and examine and cross examine witnesses and to introduce documentary evidence.
- 40.** The Board will be able to take into account any relevant matter, including any information and statements considered by the two members of the Board to whom the application was initially referred under Article 34, and may receive oral and written evidence at the hearing.
- 41.** The Board will reach its decision solely in the light of the relevant matters taken into account and evidence brought out at the hearing, and all the information, statements and evidence made available to the Board members will be made available to the applicant at, if not before, the hearing.
- 42.** Procedure at the hearing will be as informal as is consistent with the proper determination of the application, and hearings will in general be public. The Board may sit in private when it is satisfied that it is desirable to do so in order

to protect the anonymity of the applicant and any other parties. The Board will have power to publish information about its decisions in individual cases, limited only by the need to preserve the anonymity of the applicant and other parties.

- 43.** For the purposes of determining an application, the Board may require the injured person to undergo a medical examination at the cost of the Board and, in any case where the injured person refuses to undergo such an examination, no payment shall be made to him.
- 43A.** (1) If, within the 6 months after an applicant is informed of an award in his favour, the applicant does not accept the award, the award shall lapse and no longer be payable.
- (2) However, the Chairman may extend the time for the acceptance of the award if –
- (a) the extension is requested within the 6 months referred to in paragraph (1) and the Chairman considers that the request is made with good reason; or
- (b) the Chairman considers that it is otherwise in the interests of justice to do so.
- (3) If an application has been the subject of an initial decision under Article 34 and an award has been made on that basis, nothing in paragraph (1) shall prevent the making of an application in accordance with Article 36 for a hearing in the same matter or affect the Board's power to hear and decide such an application.

Implementation of the Scheme

- 44.** This Scheme will come into force on the first day of May 1991. Applications in respect of injuries suffered on or after 1st May 1991 will be dealt with under the terms of this Scheme. Applications in respect of injuries suffered before that date will be dealt with under the terms of the Scheme which came into force on the 1st June 1970. Where an initial decision of the Board in respect of an injury suffered before 1st May 1991 –
- (a) is notified after that date, the time limit of three months under Article 36 will apply to any application for a hearing;
- (b) was notified, but not accepted, before that date, an application for a hearing will not be entertained after 31st July 1991 unless the Board considers there is a good reason to extend this time limit.
- 45.** Cases in respect of injuries suffered before 1st May 1991 may be re-opened, subject to the conditions set out in Articles 22 and 25, for review under the terms of the Scheme which came into force on 1st June 1970. A decision by the Board not to waive or extend the time limits referred to in this paragraph will be final.