

Subsidiary Legislation made under s.697.

**CRIMINAL INJURIES COMPENSATION SCHEME
REGULATIONS 2013**

Repealed by LN.2020/511 as from 1.1.2021

LN.2013/041

Commencement

Not In Force

In exercise of the powers conferred upon him by section 697 of the Criminal Procedure and Evidence Act 2011, and in order to establish a compensation scheme for the victims of violent crime, to transpose into the law of Gibraltar Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, and to give effect to Commission Decision 2006/337/EC of 19 April 2006 establishing standard forms for the transmission of applications and decisions pursuant to Council Directive 2004/80/EC, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Criminal Injuries Compensation Scheme Regulations 2013 and shall come into operation on the day appointed by the Government by notice in the Gazette.

Interpretation.

2. In these Regulations—

“assisting authority” means the authority or body designated by a Member State to provide assistance in connection with claims for compensation in other Member States and in relation to Gibraltar it has the meaning given to it by regulation 8(1);

“Assisting Officer” means the person appointed under regulation 8;

“award” means an award of compensation for a criminal injury as provided for under these Regulations and the Scheme;

“Claims Officer” means the person appointed under regulation 9;

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

2013 (Not In Force)

Repealed

“deciding authority” means the authority or body designated by a Member State to be responsible for the determination of claims for compensation, and in relation to Gibraltar it has the meaning given to it by regulation 9(2);

“Decision 2006/337/EC” means Commission Decision of 19 April 2006 establishing standard forms for the transmission of applications and decisions pursuant to Council Directive 2004/80/EC relating to compensation to victims of crime;

“Directive” means Council Directive 2004/80/EC of 29 April 2004 relating to compensation to victims of crime, as the same may be amended from time to time;

“Minister” means the Minister with responsibility for justice;

“the Scheme” means the Criminal Injuries Compensation Scheme established under regulation 3;

Establishment of scheme.

3.(1) A scheme for the payment of compensation to the victims of violent crime shall be established.

(2) The Scheme shall be known as the Criminal Injuries Compensation Scheme and is set out in Schedule 1

(3) The Scheme shall operate in accordance with the provisions of these Regulations

Basis on which compensation is to be calculated.

4. The amount of compensation that may be awarded in respect of an injury to which these Regulations apply shall be determined by the Claims Officer.

In determining an award, the Claims Officer shall have regard to any guidelines issued to him by the Minister.

Eligibility criteria.

5.(1) Subject to any provisions in the Scheme, a person may apply for compensation under the Scheme if, subject to fulfilling any other applicable criteria, that person has been the victim of a violent intentional crime which was committed in Gibraltar.

(2) For the purposes of subregulation (1) a crime is a violent intentional crime if it involved deliberate conduct of a violent nature directed at the victim which constitutes a criminal offence and which resulted in that person suffering physical or mental injury.

Criminal Procedure and Evidence

2011-24

Criminal Injuries Compensation Scheme Regulations 2013 (Not In Force)

2013/041

Repealed

(3) For the purpose of determining whether conduct under subregulation (2) constitutes a criminal offence the question whether a person has been prosecuted or cannot for any reason be prosecuted shall not be relevant.

Inalienability of award.

6. An assignment of, or charge on, an award and an agreement to assign or charge an award shall be void.

Recovery from offender.

7. The Government shall be entitled in any criminal or civil proceedings to recover an award of compensation paid under the Scheme from any person who is convicted of an offence in respect of which an award has been made under the Scheme.

Appointment of Assisting Officer.

8.(1) The Minister shall appoint an Assisting Officer who, for the purposes of the Directive, shall be the assisting authority for Gibraltar.

(2) The Assisting Officer shall undertake such other duties or functions as he may be notified in writing by the Minister.

Appointment of Claims Officer.

9.(1) The Minister shall appoint a Claims Officer, to determine claims made under the Scheme and to make such payments to claimants as are admissible.

(2) For the purposes of the Directive the Claims Officer shall be the deciding authority for Gibraltar.

(3) The Claims Officer shall undertake such other duties or functions as he may be notified in writing by the Minister.

Designation of contact point.

10. For the purposes of Article 16 of the Directive the Claims Officer is designated as a central contact point for Gibraltar.

Schedules to have effect.

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

Repealed

2013 (Not In Force)

11 The Schedules to these Regulations shall have full force and effect.

SCHEDULE 1

Regulation 3(1)

CRIMINAL INJURIES COMPENSATION SCHEME

PART I

Administration of the Scheme.

1. The Claims Officer is responsible for deciding, in accordance with this Scheme and with any guidelines which may be issued to him by the Minister, what awards (if any) should be made in individual cases to persons who are eligible under Regulation 5 to apply for compensation under the Scheme, and shall, subject to the provisions of this Scheme and any other applicable provisions, pay the claimant such sum as he determines from the fund made available for that purpose.

Eligibility to apply for compensation.

2.(1) Compensation may be paid in accordance with this Scheme to an applicant who becomes eligible to apply under Regulation 5 on or after the date of commencement of these Regulations.

(2) For the purposes of this Scheme, “applicant” means any person for whose benefit an application for compensation is made, even where it is made on his behalf by another person.

(3) In the case of a person who is under 18 years at the time of the application, the application shall be made on his behalf by his legal guardian.

No duplicate compensation.

3.(1) No compensation will be paid under this Scheme where in respect of the same criminal injury the applicant has benefited as a result of—

- (a) any compensation under this Scheme;
- (b) a compensation award or similar payment from the funds of a country or other territory outside Gibraltar;
- (c) an order by a civil court whether in Gibraltar or elsewhere for the payment of damages;

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

Repealed

2013 (Not In Force)

- (d) an order by a criminal court whether in Gibraltar or elsewhere for payment of compensation in respect of personal injuries or a compensation offer; or
- (e) a settlement of a claim for damages, compensation or both on terms providing for the payment of money.

(2) The Claims Officer may require an applicant to provide details of any steps taken or planned to obtain damages or compensation in respect of the same injury and may decline to process an application further until those details have been provided or until the applicant's attempts to obtain such damages or compensation have been exhausted.

Meaning of “criminal injury”.

4. For the purposes of this Scheme, “criminal injury” means one or more personal injuries as described in paragraph 5, being an injury sustained in and directly attributable to a deliberate act occurring in Gibraltar which is a crime of violence (including arson or an act of poisoning).

Meaning of “personal injury”.

5. For the purposes of this Scheme, personal injury includes physical injury, mental injury (that is temporary mental anxiety, medically verified, or a disabling mental illness confirmed by psychiatric diagnosis) and disease (that is a medically recognised illness or condition). Mental injury or disease may either result directly from the physical injury or from a sexual offence or may occur without any physical injury. Compensation will not be payable for mental injury or disease without physical injury, or in respect of a sexual offence, unless the applicant—

- (a) was put in reasonable fear of immediate physical harm to his own person; or
- (b) had a close relationship of love and affection with another person at the time when that person sustained physical and/or mental injury directly attributable to conduct within paragraph 4 and that relationship still subsists; or
- (c) in a claim arising out of a sexual offence, was the non-consenting victim of that offence (which does not include a victim who consented in fact but was deemed in law not to have consented).

Criminal conviction unnecessary.

6.(1) It is not necessary for the assailant to have been convicted of a criminal offence in connection with the injury.

(2) Where the injury is attributable to conduct within paragraph 4 in respect of which the assailant cannot be convicted of an offence by reason of age, insanity or diplomatic immunity, the conduct may nevertheless be treated as constituting a criminal act.

Injury caused with vehicle.

7.(1) A personal injury is not a criminal injury for the purposes of this Scheme where the injury is attributable to the use of a vehicle, except where the vehicle was used so as deliberately to inflict, or attempt to inflict, injury on any person.

(2) For the purposes of this Scheme a “vehicle” is any device by which persons, animals or goods are or can be transported on or under land or water, or by air.

Eligibility to receive compensation

8. The Claims Officer may withhold or reduce an award where he considers that—

- (a) the applicant failed to take, without delay, all reasonable steps to inform the police of the circumstances giving rise to the criminal injury;
- (b) the applicant failed to co-operate with the police or prosecutors in attempting to bring the assailant to justice;
- (c) the applicant has failed to give all reasonable assistance to the Claims Officer or other body or person in connection with the application;
- (d) the conduct of the applicant before, during or after the incident giving rise to the application makes it inappropriate that a full award or any award at all be made;
or
- (e) the applicant’s character as shown by his criminal convictions (excluding convictions spent at the date of application) or by evidence available to the Claims Officer makes it inappropriate that a full award or any award at all be made.

Factors affecting award.

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

Repealed

2013 (Not In Force)

9.(1) In considering the issue of reasonable assistance under paragraph 8(c), the Claims Officer may withhold an award where the applicant has repeatedly and without reasonable excuse failed to respond to communications sent to his last known address.

(2) In considering the issue of conduct under paragraph 8(d), the Claims Officer may withhold or reduce an award where he considers that excessive consumption of alcohol or use of illicit drugs or other inappropriate behaviour by the applicant contributed to the circumstances which gave rise to the criminal injury in such a way as to make it inappropriate that a full award, or any award at all, be made.

Withholding award.

10. The Claims Officer will make an award only where he is satisfied—

- (a) that there is no likelihood that an assailant would benefit if an award were made; or
- (b) where the applicant is under 18 years of age when the application is determined, that it would not be against his interest for an award to be made.

Manner of making applications.

11.(1) An application for compensation under this Scheme must be made in writing on a form obtainable from the Claims Officer.

(2) It should be made as soon as possible after the incident giving rise to the criminal injury and must be received by the Claims Officer within 90 days of the date of the incident.

(3) The Claims Officer may waive this time limit only where he considers that—

- (a) it is practicable for the application to be considered; and
- (b) in the particular circumstances of the case, it would not have been reasonable to expect the applicant to have made an application within the 90 day period.

Applicant to make case.

12.(1) It will be for the applicant to make out his case including, where appropriate—

- (a) making out the case for a waiver of the time limit in paragraph 11; and

Criminal Procedure and Evidence

2011-24

Criminal Injuries Compensation Scheme Regulations 2013 (Not In Force)

2013/041

Repealed

(b) satisfying the Claims Officer that an award should not be withheld or reduced under any provision of this Scheme.

(2) Where an applicant is represented, the costs of representation will not be recoverable.

Directions.

13. The Claims Officer may make such directions and arrangements for the conduct of an application, including the imposition of conditions, as he considers appropriate in all the circumstances.

Standard of proof.

14. The standard of proof to be applied by the Claims Officer in all matters will be the balance of probabilities.

Examination of injury.

15. Where the Claims Officer considers that an examination of the injury is required before a decision can be reached, he will make arrangements for such an examination by a duly qualified medical practitioner at no cost to the claimant.

Types and limits of compensation.

16. Subject to the other provisions of this Scheme, the compensation payable under an award will be an amount to be determined by reference to the nature and seriousness of the injury, including the long term effects on the applicant.

Maximum award.

17.(1) The maximum award that may be made (before any reduction under paragraphs 8 or 9) in respect of injuries arising out of an episode of criminal conduct, shall not exceed £20,000.

(2) The maximum award of £20,000 shall also apply in circumstances where there is more than one applicant in respect of an episode of criminal conduct, and also in cases of multiple injuries.

Incidental losses.

18. The Claims Officer shall not consider any claim for incidental losses such as loss of or damage to property

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

Repealed

2013 (Not In Force)

Withholding award pending further applications.

19. Where, in the opinion of the Claims Officer, an applicant may be or may become eligible for any social security benefits, insurance payments or pension benefits, an award may be withheld until the applicant has taken such steps as the Claims Officer considers reasonable to claim them.

Repayment where other payments received.

20. Where a person in whose favour an award under this Scheme is made subsequently receives any other payment in respect of the same injury in any of the circumstances mentioned in paragraph 3 of this Schedule, but the award made under this Scheme was not reduced accordingly, the person will be required to repay in full up to the amount of the other payment.

Determination of applications and payment of awards.

21.(1) An application for compensation under this Scheme will be determined by the Claims Officer, and written notification of the decision will be sent to the applicant or the applicant's representative.

(2) Written acceptance of an award must be received by the Claims Officer within 90 days of the date the decision was issued. If such an acceptance is not received within that period, the Claims Officer may withdraw the award.

(3) The Claims Officer may grant an extension to this time limit (whether or not it has already expired) and overturn any withdrawal, if—

- (a) the applicant has made a written request for an extension; and
- (b) the Claims Officer considers that there are exceptional circumstances which justify the granting of an extension.

(4) The Claims Officer may make such directions and arrangements, including the imposition of conditions, in connection with the acceptance, payment or repayment as he considers appropriate in all the circumstances. Any such directions and arrangements may be made having regard to the interests of the applicant as well as to considerations of public policy. Subject to any such arrangements, title to an award offered will be vested in the applicant when the Claims Officer has received notification in writing that the applicant accepts the award.

Lump sum and interim payments.

22. Compensation will normally be paid as a single lump sum, but one or more interim payments may be made where the Claims Officer considers this appropriate. Once an award has been paid to an applicant or the applicant's representative, this paragraph does not apply.

Reconsideration of decisions.

23. A decision made by the Claims Officer may be reconsidered at any time before actual payment of a final award where there is new evidence or a change in circumstances. In particular, the fact that an interim payment has been made does not preclude the Claims Officer from reconsidering issues of eligibility for an award.

Representations on decision to reconsider.

24. Where an applicant has requested that the decision by the Claims Officer be reconsidered, the applicant will be sent written notice stating whether the decision will be reconsidered, and if it will be reconsidered, any representations which the applicant sends to the Claims Officer within 30 days of the date of such notice will be taken into account in reconsidering the decision. Whether or not any such representations are made, the applicant will be sent written notification of the outcome of the reconsideration, and where the original decision is not confirmed, such notification will include the revised decision.

Re-opening of cases.

25. A decision made by the Claims Officer and accepted by the applicant will normally be regarded as final. The Claims Officer may, however, subsequently re-open a case where there has been such a material change in the victim's medical condition that injustice would occur if the original assessment of compensation were allowed to stand.

Condition prior to re-opening.

26. A case will not be re-opened more than two years after the date of the final decision unless the Claims Officer is satisfied, on the basis of evidence presented in support of the application to re-open the case, that the renewed application can be considered without a need for further extensive enquiries.

No appeals.

27. There shall be no appeal from the decision of the Claims Officer.

Implementation.

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

Repealed

2013 (Not In Force)

28. The provisions of this Scheme shall come into force on the date of commencement of these Regulations.

Minors.

29. Where an application has not been made in respect of a minor who has suffered criminal injury on or after the date of commencement of these Regulations, the time for making an application commences on his 18th birthday.

PART II

Compensation in cross-border cases

Interpretation of Part.

30. In this Part—

“application for compensation” means an application for compensation made in connection with a violent intentional crime committed in a Member State other than the Member State where the applicant for compensation is habitually resident and “applicant for compensation” shall be construed accordingly.

Right to submit application.

31. A person who is the victim of a violent intentional crime may submit an application for compensation to the Assisting Officer.

Information and assistance to applicants.

32.(1) The Assisting Officer shall provide potential applicants for compensation with access to essential information on the possibilities to apply for compensation.

(2) The Assisting Officer shall provide an applicant for compensation with—

- (a) the application forms required for making an application for compensation as provided for in Schedule 2;
- (b) upon the request of the applicant for compensation with general guidance and information on how the application should be completed and what supporting documentation may be required.

Transmission of applications.

33. Upon receipt of an application for compensation, the Assisting Officer shall transmit the application and any supporting documentation as quickly as possible to the relevant deciding authority using the standard form set out in Schedule 2.

Receipt of applications.

34. Upon receipt of an application for compensation from an assisting authority in a Member State the Claims Officer shall send the following information as soon as possible to that assisting authority and to the applicant for compensation—

- (a) the contact person or department responsible for handling the matter;
- (b) an acknowledgement of the receipt of the application;
- (c) if possible, an indication of the approximate time by which a decision on the application will be made.

Requests for supplementary information.

35. The Assisting Officer shall, if he considers it necessary, provide an applicant for compensation with general guidance as to meeting any request for supplementary information from the relevant deciding authority.

(2) If asked to do so by an applicant for compensation, the Assisting Officer shall transmit any such supplementary information as soon as possible to the relevant deciding authority enclosing, where appropriate, a list of any supporting documentation transmitted.

Hearing of the applicant.

36.(1) A deciding authority outside Gibraltar that requires the hearing of an applicant for compensation or any other person (such as a witness or expert) may request the Assisting Officer to—

- (a) arrange for that hearing through the use, in particular of telephone or video conferencing; or
- (b) hear the applicant or other person itself and subsequently submit a report of the hearing to the deciding authority.

(2) A hearing conducted in the manner provided for in subparagraph (1) shall be conducted in accordance with the laws of applicable to the deciding authority.

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

2013 (Not In Force)

Repealed

- (3) A hearing conducted in accordance with subparagraph (1)(a) may only take place—
- (a) in cooperation with the Assisting Officer;
 - (b) on a voluntary basis; and
 - (c) on the basis that no coercive measures may be imposed by the deciding authority.

Communication of decisions.

37. The Claims Officer shall send his decision on an application for compensation, by using the form provided in Schedule 2 to the applicant and to the assisting authority as soon as possible after the decision has been taken.

Language.

38.(1) Information transmitted by the Assisting Officer or the Claims Officer to an assisting authority or deciding authority in a Member State pursuant to paragraphs 34 to 37 shall be expressed in—

- (a) the official languages or one of the languages of that Member State which corresponds to one of the languages of the Community institutions; or
- (b) another language of the Community institutions that that Member State has indicated it will accept.

(2) Subparagraph (1) shall not apply to—

- (a) the full text of the decision pursuant to paragraph 37,
- (b) reports drawn up following a hearing pursuant to paragraph 36(1)(b).

(3) Services rendered under this Part by the Assisting Officer shall not give rise to a claim for reimbursement of charges or costs from the applicant for compensation or from the relevant deciding authority.

(4) Application forms and any other documentation transmitted in accordance with paragraphs 33 to 37 are exempted from authentication or any equivalent formality.

SCHEDULE 2

This Schedule reproduces the forms in Annex I and II of Commission Decision (2006/337/EC) of 19 April 2006 establishing standard forms for the transmission of applications and decisions pursuant to Council Directive 2004/80/EC relating to compensation to crime victims

FORM FOR THE TRANSMISSION OF AN APPLICATION
FOR COMPENSATION IN CROSS-BORDER
SITUATIONS
(Article 6(2) of Directive 2004/80/EC)

1. **Case reference:**

2. **Language of the application and any supporting documentation** (Article 6(3) of Directive 2004/80/EC):

3. **Application transmitted by:**

Details of the assisting authority (transmitting authority):

Name of the authority:

Member State:

Contact person or the department responsible for handling the matter:

Address:

Telephone (including code):

Fax:

E-mail:

4. **To:**

Details of the deciding authority (receiving authority):

Name of the authority:

Member State:

Address:

Telephone (including code):

Fax:

E-mail:

5. **Details of the person applying for compensation:**

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

2013 (Not In Force)

Repealed

Family name:

First name:

Sex:

Date of birth:

Nationality:

Address and postcode:

Place where the person habitually lives (if different from place of residence):

Telephone (including code):

Fax:

E-mail:

Bank details (For transfers, the BIC must be provided instead of the bank code, and the IBAN must be given instead of the account number):

BIC:	IBAN:	Name of bank:	Contact abroad:	
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If applicable, represented by:

6. Details of the injured person if that person is not the applicant:

Family name:

First name:

Sex:

Date of birth:

Nationality:

Address and postcode:

Place where the person habitually lives (if different from place of residence):

Telephone number (including code):

Fax:

E-mail:

Done at:

Date:

By:

(signature or stamp)

7. List of supporting documents annexed

ACKNOWLEDGEMENT OF RECEIPT
(Article 7 of Directive 2004/80/EC)*

To be sent to the assisting authority and to the applicant

The deciding authority:

Name of the authority: Member State: Case reference: Contact person or the department responsible for handling the matter: Address: Telephone (including code): Fax: E-mail:
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If possible an indication of the approximate time by which a decision on the application will be made (Article 7(c) of Directive 2004/80/EC):

This acknowledges the receipt of the application transmitted by the assisting authority:

Date of receipt:

Done at:

Date:

By:

(Signature and/or stamp)

* The deciding authority may use a similar form or any other way of acknowledgement of receipt provided that it fulfils the obligations under Article 7 of the Directive.

FORM FOR THE TRANSMISSION OF A DECISION ON AN APPLICATION FOR COMPENSATION IN CROSS-BORDER SITUATIONS (Article 10 of Directive 2004/80/EC)
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1. **Case reference:**

2. **Date of the decision:**

2011-24

Criminal Procedure and Evidence

2013/041

Criminal Injuries Compensation Scheme Regulations

2013 (Not In Force)

Repealed

3. Language of the decision:

4. Decision transmitted by:

Details of the deciding authority (transmitting authority):

Name of the authority:

Member State:

Contact person or the department responsible for handling the matter:

Address:

Telephone (including code):

Fax:

E-mail:

5. To:

Details of the assisting authority (receiving authority):

Name of the authority:

Member State:

Contact person or the department responsible for handling the matter:

Address:

Telephone (including code):

Fax:

E-mail:

6. And to:

Details of the applicant:

Name of the applicant:

Address:

Telephone (including code)

Fax:

E-mail:

Legal representative (if applicable):

Criminal Procedure and Evidence

2011-24

**Criminal Injuries Compensation Scheme Regulations
2013 (Not In Force)**

2013/041

Repealed

7. Details of the Decision:

NB: This information is provided without prejudice to the text of the decision

a) Summary:

b) Information about the possibility to appeal, competent authority and deadlines:

c) Other information or action required by the applicant (to be completed where necessary):

Done at:

Date:

By:

(signature and/or stamp)