

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Criminal Justice

Section 113 - Compensation for miscarriages of justice

559. The Scottish Government operates two schemes for the payment of compensation as a result of a miscarriage of justice. The statutory scheme under section 133 of the Criminal Justice Act 1988 (“the 1988 Act”) provides for compensation to be paid in certain circumstances. The decision as to whether compensation is payable is for Scottish Ministers but the amount of the award is quantified solely by an independent assessor. An ex gratia scheme covering other types of cases has also operated for a number of years with successful cases treated in the same way as statutory ones by the assessor.
560. Subsection (1)(a) inserts a new subsection (1A) into section 133 of the 1988 Act which gives Scottish Ministers an order-making power to specify further sets of circumstances in which compensation may be payable. This power will be used to replace the existing ex gratia scheme by placing it on a statutory footing with the existing statutory scheme. It is intended to correspond to the existing ex gratia criteria. The seriousness of the offence for which the individual was charged or detained, but not convicted, will be taken account of when assessing compensation (subsection (1)(c)). This is consistent with the way the assessor takes into account the seriousness of the offence when assessing compensation under the statutory scheme where the individual had been convicted.
561. Subsection (1)(b) inserts subsections (2AA) and (2AB), that impose a time limit of 3 years for applications to be made for compensation. It also allows a discretionary power for the Scottish Ministers to waive that time limit where it is in the interests of justice to do so, or where there are exceptional circumstances. The 3 year time limit is consistent with civil limitation periods for personal injury claims.
562. Subsection (1)(d) inserts subsection (4B), that requires the Independent Assessors have particular regard to any guidance issued by the Scottish Ministers. However, it is not intended for the guidance to impinge on the independence of the assessor when making a decision on the quantum of a claim but is designed to promote consistency in decision making.
563. Section 133(5) of the 1988 Act states that a conviction being “reversed” (one of the criteria for eligibility for compensation) shall be taken to mean as referring to a conviction being quashed in certain circumstances. Section 188 of the Criminal Procedure (Scotland) Act 1995 allows for a conviction and sentence or both to be set aside by way of a minute from the prosecutor to the court without an appeal being heard but in such circumstances this would not entitle a successful appellant to seek compensation for a miscarriage of justice. Subsection (1)(e) amends section 133(5)

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

of the 1988 Act to make appropriate changes to the 1988 Act to allow someone who has had their conviction set aside by way of section 188(1)(b) of the 1995 Act to be considered for compensation.

564. Subsection (1)(f) inserts new subsection (6A), which makes an amendment to the 1988 Act so that those persons who are subject to a probation order or discharged absolutely are eligible to seek compensation in accordance with the Act. The order-making power in this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.
565. Subsection (2) removes a redundant reference to the Criminal Injuries Compensation Board in Schedule 12 to the 1988 Act.