



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART XI

#### MISCELLANEOUS

##### *Miscarriages of justice*

#### **133 Compensation for miscarriages of justice. E+W+N.I.**

(1) Subject to subsection (2) below, when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.

[<sup>F1</sup>(1ZA) For the purposes of subsection (1), there has been a miscarriage of justice in relation to a person convicted of a criminal offence in England and Wales or, in a case where subsection (6H) applies, Northern Ireland, if and only if the new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence (and references in the rest of this Part to a miscarriage of justice are to be construed accordingly).]

(2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State

[<sup>F2</sup>before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned.

(2A) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.]

*Status: There are multiple versions of this provision on screen. These apply to different geographical extents. Skip to: E+W+N.I. - England, Wales and Northern Ireland extentS - Scotland extent*

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- (3) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.
- (4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.
- [<sup>F3</sup>(4A) Section 133A applies in relation to the assessment of the amount of the compensation.]
- (5) In this section “reversed” shall be construed as referring to a conviction having been quashed—
- (a) on an appeal out of time; or
  - (b) on a reference—
    - <sup>F4</sup>[( i ) under the Criminal Appeal Act 1995; or]
    - [<sup>F5</sup>(ii) under section 194B of the Criminal Procedure (Scotland) Act 1995 (c. 46);]
    - <sup>F6</sup>(iii) ..... [<sup>F7</sup>or
  - (c) on an appeal under section 7 of the Terrorism Act 2000][<sup>F8</sup> or
  - <sup>F9</sup>( d ) .....][<sup>F10</sup>; or
  - (f) on an appeal under Schedule 3 to the Terrorism Prevention and Investigation Measures Act 2011.][<sup>F11</sup>or
  - (g) on an appeal under Schedule 4 to the Counter-Terrorism and Security Act 2015;][<sup>F12</sup>or
  - (h) on an appeal under Schedule 9 to the National Security Act 2023.]
- [<sup>F13</sup>(5A) But in a case where—
- (a) a person's conviction for an offence is quashed on an appeal out of time, and
  - (b) the person is to be subject to a retrial,
- the conviction is not to be treated for the purposes of this section as “reversed” unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.
- (5B) In subsection (5A) above any reference to a retrial includes a reference to proceedings held following the remission of a matter to a magistrates' court by the Crown Court under section 48(2)(b) of the [<sup>F14</sup>Senior Courts Act 1981].]
- (6) For the purposes of this section [<sup>F15</sup>and section 133A] a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.
- [<sup>F16</sup>(6A) Subject to what follows, in the application of this section in relation to a person (“P”) convicted in Northern Ireland of a criminal offence, in subsections (1) to (4) any reference to the Secretary of State is to be read as a reference to the Department of Justice in Northern Ireland.
- (6B) If P is pardoned, subsection (6A) applies only if the pardon is a devolved pardon.
- (6C) Subsections (6D) to (6H) apply if—
- (a) P’s conviction is reversed or P is given a devolved pardon,
  - (b) an application for compensation is made in relation to P’s conviction,

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- (c) the application is made before the end of the period mentioned in subsection (2) or, if it is made after the end of that period, the Department of Justice gives a direction under subsection (2A), and
  - (d) the Department of Justice has reason to believe that protected information may be relevant to the application (for example, because the court which quashed P's conviction did not make public (in whole or in part) its reasons for quashing P's conviction).
- (6D) The Department of Justice must refer the application to the Secretary of State who must then take a view as to whether or not any protected information is relevant to the application.
- (6E) If the Secretary of State takes the view that no protected information is relevant to the application, the Secretary of State must refer the application back to the Department of Justice to be dealt with by the Department accordingly.
- (6F) If the Secretary of State takes the view that protected information is relevant to the application, the Secretary of State must refer the application back to the Department of Justice to be dealt with by the Department accordingly unless the Secretary of State is also of the view that, on the grounds of national security, it is not feasible for the Department (including any assessor appointed by the Department) to be provided with either—
- (a) the protected information, or
  - (b) a summary of the protected information that is sufficiently detailed to enable the Department (including any assessor) to deal properly with the application.
- (6G) If the Secretary of State refers the application back to the Department of Justice under subsection (6F), the Secretary of State must provide the Department with either—
- (a) the protected information, or
  - (b) a summary of the protected information that appears to the Secretary of State to be sufficiently detailed to enable the Department (including any assessor) to deal properly with the application.
- (6H) If the Secretary of State is not required to refer the application back to the Department of Justice—
- (a) subsections (3) and (4) apply to the application ignoring subsection (6A), and
  - (b) any compensation payable on the application is payable by the Secretary of State.
- (6I) In this section “protected information” means information the disclosure of which may be against the interests of national security.
- (6J) In this section “devolved pardon” means—
- (a) a pardon given after the coming into force of the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010 in the exercise of powers under section 23(2) of the Northern Ireland Act 1998;
  - (b) a pardon given before the coming into force of that Order which, had it been given after the coming into force of that Order, would have had to have been given in the exercise of powers under section 23(2) of the 1998 Act (ignoring article 25(2) of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010).

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(6K) The pardons covered by subsection (6J)(a) include pardons given in reliance on article 25(2) of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.]

(7) Schedule 12 shall have effect.

#### Extent Information

**E1** This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland

#### Textual Amendments

- F1** S. 133(1ZA) inserted (13.3.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 175\(1\)](#), [185\(1\)](#), [\(2\)\(a\)](#) (with [ss. 21](#), [33](#), [42](#), [58](#), [75](#), [93](#), [175\(2\)](#))
- F2** S. 133: s. 133(2A) and preceding words in 133(2) inserted (E.W.N.I) (1.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 61\(3\)](#), [153](#) (with [Sch. 27 para. 22](#)); S.I. 2008/2993, [art. 2\(1\)\(a\)](#)
- F3** S. 133(4A) substituted (E.W.N.I) (1.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 61\(4\)](#), [153](#) (with [Sch. 27 para. 22](#)); S.I. 2008/2993, [art. 2\(1\)\(a\)](#)
- F4** S. 133(5)(b)(i) substituted (31.3.1997) by [1995 c. 35](#), s. 29(1), [Sch. 2 para. 16\(4\)](#); S.I. 1997/402, [art. 3\(e\)](#)
- F5** S. 133(5)(b)(ii) substituted (S.) (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#), (asp 6), [ss. 80](#), [84](#), {[Sch. 5 para. 6\(1\)](#)}; S.S.I. 2007/250, [art. 3\(h\)\(i\)](#)
- F6** S. 133(5)(b)(iii) and the word immediately preceding it repealed (1.1.1996) by [1995 c. 35](#), s. 29(2), [Sch. 3](#); S.I. 1995/3061, [art. 3\(i\)\(vii\)](#) (and s. 133(5)(b)(iii) expressed to be repealed (31.3.1997) by [1995 c. 35](#), s. 29(1), [Sch. 2 para. 16\(4\)](#); S.I. 1997/402, [art. 3\(e\)](#))
- F7** S. 133(5)(c) and word or immediately preceding it inserted (19.2.2001) by [2000 c. 11](#), [s. 7\(8\)](#); S.I. 2001/421, [art. 2](#)
- F8** S. 133(5)(d) and word inserted (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), [ss. 12\(8\)](#), [16](#)
- F9** S. 133(5)(d) omitted (15.12.2011) by virtue of [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), s. 31(2), [Sch. 7 para. 3\(a\)](#) (with [Sch. 8](#))
- F10** S. 133(5)(f) and word inserted (15.12.2011) by [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), s. 31(2), [Sch. 7 para. 3\(b\)](#) (with [Sch. 8](#))
- F11** S. 133(5)(g) inserted (12.2.2015) by [Counter-Terrorism and Security Act 2015 \(c. 6\)](#), [ss. 15\(2\)\(b\)](#), [52\(5\)](#)
- F12** S. 133(5)(h) and word inserted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Primary Legislation\) Regulations 2023 \(S.I. 2023/1386\)](#), [reg. 1\(2\)](#), [Sch. para. 8](#)
- F13** S. 133(5A)(5B) inserted (E.W.N.I) (1.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 61\(5\)](#), [153](#) (with [Sch. 27 para. 22](#)); S.I. 2008/2993, [art. 2\(1\)\(a\)](#)
- F14** Words in s. 133(5B) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), [ss. 59](#), [148](#), [Sch. 11 para. 1](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F15** Words in s. 133(6) inserted (E.W.N.I) (1.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 61\(6\)](#), [153](#) (with [Sch. 27 para. 22](#)); S.I. 2008/2993, [art. 2\(1\)\(a\)](#)
- F16** S. 133(6A)-(6K) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), [art. 1\(2\)](#), [Sch. 6 para. 2\(1\)](#) (with [arts. 28-31](#), [Sch. 6 para. 2\(2\)](#))

## 133 Compensation for miscarriages of justice. **S**

(1) Subject to subsection (2) below, when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable

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doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.

[<sup>F17</sup>(1A) The Scottish Ministers may by order provide for—

- (a) further circumstances in respect of which a person (or, if dead, the person's representatives) may be paid compensation for a miscarriage of justice,
- (b) circumstances in respect of which a person (or, if dead, the person's representatives) may be paid compensation for wrongful detention prior to acquittal or a decision by the prosecutor to take no proceedings (or to discontinue proceedings).]

(2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State.

[<sup>F18</sup>(2AA) Such an application requires to be made within the period of 3 years starting with—

- (a) in the case of compensation under subsection (1), the date on which the conviction is reversed or (as the case may be) the person is pardoned,
- (b) in the case of compensation under subsection (1A), whichever is relevant of—
  - (i) that date, or
  - (ii) the date on which the person is acquitted or the relevant decision is made known to the person.

(2AB) The Scottish Ministers may accept such an application outwith that time limit if they think it is appropriate in exceptional circumstances to do so.]

(3) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.

(4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.

<sup>F19</sup>[(4A) In assessing so much of any compensation payable under this section to or in respect of a person as is attributable to suffering, harm to reputation or similar damage, the assessor shall have regard in particular to—

(a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction;

[ the seriousness of the offence with which the person was charged or detained  
<sup>F20</sup>(aa) (but in respect of which offence the person was not convicted);]

(b) the conduct of the investigation and prosecution of the offence; and

(c) any other convictions of the person and any punishment resulting from them.]

[<sup>F21</sup>(4B) The assessor must also have particular regard to any guidance issued by the Scottish Ministers for the purposes of this section.]

(5) In this section “reversed” shall be construed as referring to a conviction having been quashed [<sup>F22</sup>(or set aside)]—

(a) on an appeal out of time; <sup>F23</sup>...

(b) on a reference—

<sup>F4</sup>[(i) under the Criminal Appeal Act 1995; <sup>F23</sup> ... ]

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- [<sup>F5</sup>(ii) under section 194B of the Criminal Procedure (Scotland) Act 1995 (c. 46);]
- <sup>F6</sup>(iii) ..... [<sup>F7</sup>or
- (c) on an appeal under section 7 of the Terrorism Act 2000 ]<sup>F23</sup>[<sup>F8</sup> ...
- <sup>F9</sup>(d) ..... ]<sup>F24</sup>; or
- (e) under section 188(1)(b) of the Criminal Procedure (Scotland) Act 1995. ]<sup>F10</sup>; <sup>F25</sup> ...
- (f) on an appeal under Schedule 3 to the Terrorism Prevention and Investigation Measures Act 2011. ]<sup>F11</sup>or
- (g) on an appeal under Schedule 4 to the Counter-Terrorism and Security Act 2015; ]<sup>F12</sup>or
- (h) on an appeal under Schedule 9 to the National Security Act 2023.]
- (6) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.
- [<sup>F26</sup>(6A) For the purposes of this section, a person suffers punishment as a result of conviction also where (in relation to the conviction) the court imposes some other disposal including by way of—
- (a) making a probation order, or
- (b) discharging the person absolutely.]
- (7) Schedule 12 shall have effect.
- [<sup>F27</sup>(8) The power to make an order under subsection (1A) is exercisable by statutory instrument.
- (9) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

#### Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

#### Textual Amendments

- F4** S. 133(5)(b)(i) substituted (31.3.1997) by 1995 c. 35, s. 29(1), **Sch. 2 para. 16(4)**; S.I. 1997/402, **art. 3(e)**
- F5** S. 133(5)(b)(ii) substituted (S.) (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007, (asp 6), ss. 80, 84, {Sch. 5 para. 6(1)}; S.I. 2007/250, **art. 3(h)(i)**
- F6** S. 133(5)(b)(iii) and the word immediately preceding it repealed (1.1.1996) by 1995 c. 35, s. 29(2), **Sch. 3**; S.I. 1995/3061, **art. 3(i)(vii)** (and s. 133(5)(b)(iii) expressed to be repealed (31.3.1997) by 1995 c. 35, s. 29(1), **Sch. 2 para. 16(4)**; S.I. 1997/402, **art. 3(e)**)
- F7** S. 133(5)(c) and word or immediately preceding it inserted (19.2.2001) by 2000 c. 11, s. 7(8); S.I. 2001/421, **art. 2**
- F8** S. 133(5)(d) and word inserted (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), **ss. 12(8)**, 16
- F9** S. 133(5)(d) omitted (15.12.2011) by virtue of Terrorism Prevention and Investigation Measures Act 2011 (c. 23), s. 31(2), **Sch. 7 para. 3(a)** (with Sch. 8)
- F10** S. 133(5)(f) and word inserted (15.12.2011) by Terrorism Prevention and Investigation Measures Act 2011 (c. 23), s. 31(2), **Sch. 7 para. 3(b)** (with Sch. 8)
- F11** S. 133(5)(g) inserted (12.2.2015) by Counter-Terrorism and Security Act 2015 (c. 6), **ss. 15(2)(b)**, 52(5)

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- F12** S. 133(5)(h) and word inserted (20.12.2023) by The National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023 (S.I. 2023/1386), reg. 1(2), **Sch. para. 8**
- F17** S. 133(1A) inserted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(a)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)
- F18** S. 133(2AA)(2AB) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(b)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)
- F19** S. 133(4A) inserted (1.1.1996) by 1995 c. 35, s. 28; S.I. 1995/3061, **art. 3(c)**
- F20** S. 133(4A)(aa) inserted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(c)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)
- F21** S. 133(4B) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(d)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)
- F22** Words in s. 133(5) inserted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(e)(i)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)
- F23** Word in s. 133(5)(a)(b)(c) repealed (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(e)(ii)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)
- F24** S. 133(5)(e) and word added (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(e)(iii)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)
- F25** Word in s. 133(5)(e) omitted (12.2.2015) by virtue of Counter-Terrorism and Security Act 2015 (c. 6), **ss. 15(2)(a)**, 52(5)
- F26** S. 133(6A) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(f)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)
- F27** S. 133(8)(9) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(g)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

**Status:**

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**Skip to:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 36(2)(b)(v) and word inserted by [2019 c. 17 s. 13\(3\)\(b\)](#)
- s. 36(3A)(3B) substituted for s. 36(3A) by [2008 c. 4 s. 46\(2\)](#)
- s. 41(4A) inserted by [2004 c. 28 Sch. 10 para. 28](#)
- s. 139AZA(1)(a)(iii) and word inserted by [2019 c. 17 s. 13\(4\)\(b\)](#)