

SCHEDULES

SCHEDULE 10

Section 144

PARENTAL COMPENSATION ORDERS

PART 1

ENGLAND AND WALES

- 1 The Crime and Disorder Act 1998 (c. 37) is amended as provided in paragraphs 2 to 5.
- 2 After section 13 insert—

“Parental compensation orders

- (1) A magistrates' court may make an order under this section (a “parental compensation order”) if on the application of a local authority it is satisfied, on the civil standard of proof—
 - (a) that the condition mentioned in subsection (2) below is fulfilled with respect to a child under the age of 10; and
 - (b) that it would be desirable to make the order in the interests of preventing a repetition of the behaviour in question.
- (2) The condition is that the child has taken, or caused loss of or damage to, property in the course of—
 - (a) committing an act which, if he had been aged 10 or over, would have constituted an offence; or
 - (b) acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself.
- (3) A parental compensation order is an order which requires any person specified in the order who is a parent or guardian of the child (other than a local authority) to pay compensation of an amount specified in the order to any person or persons specified in the order who is, or are, affected by the taking of the property or its loss or damage.
- (4) The amount of compensation specified may not exceed £5,000 in all.
- (5) The Secretary of State may by order amend subsection (4) above so as to substitute a different amount.
- (6) For the purposes of collection and enforcement, a parental compensation order is to be treated as if it were a sum adjudged to be paid on the conviction by the magistrates' court which made the order of the person or persons specified in the order as liable to pay the compensation.

- (7) In this section and sections 13B and 13C below, “local authority” has the same meaning as in the 1989 Act.

Parental compensation orders: the compensation

- (1) When specifying the amount of compensation for the purposes of section 13A(3) above, the magistrates' court shall take into account—
- (a) the value of the property taken or damaged, or whose loss was caused, by the child;
 - (b) any further loss which flowed from the taking of or damage to the property, or from its loss;
 - (c) whether the child, or any parent or guardian of his, has already paid any compensation for the property (and if so, how much);
 - (d) whether the child, or any parent or guardian of his, has already made any reparation (and if so, what it consisted of);
 - (e) the means of those to be specified in the order as liable to pay the compensation, so far as the court can ascertain them;
 - (f) whether there was any lack of care on the part of the person affected by the taking of the property or its loss or damage which made it easier for the child to take or damage the property or to cause its loss.
- (2) If property taken is recovered before compensation is ordered to be paid in respect of it—
- (a) the court shall not order any such compensation to be payable in respect of it if it is not damaged;
 - (b) if it is damaged, the damage shall be treated for the purposes of making a parental compensation order as having been caused by the child, regardless of how it was caused and who caused it.
- (3) The court shall specify in the order how and by when the compensation is to be paid (for example, it may specify that the compensation is to be paid by instalments, and specify the date by which each instalment must be paid).
- (4) For the purpose of ascertaining the means of the parent or guardian, the court may, before specifying the amount of compensation, order him to provide the court, within such period as it may specify in the order, such a statement of his financial circumstances as the court may require.
- (5) A person who without reasonable excuse fails to comply with an order under subsection (4) above is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) If, in providing a statement of his financial circumstances pursuant to an order under subsection (4) above, a person—
- (a) makes a statement which he knows to be false in a material particular;
 - (b) recklessly provides a statement which is false in a material particular; or
 - (c) knowingly fails to disclose any material fact,
- he is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Status: This is the original version (as it was originally enacted).

- (7) Proceedings in respect of an offence under subsection (6) above may, despite anything in section 127(1) of the 1980 Act (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months of its first discovery by the local authority, whichever period expires earlier.

Parental compensation orders: supplemental

- (1) Before deciding whether or not to make a parental compensation order in favour of any person, the magistrates' court shall take into account the views of that person about whether a parental compensation order should be made in his favour.
- (2) Before making a parental compensation order, the magistrates' court shall obtain and consider information about the child's family circumstances and the likely effect of the order on those circumstances.
- (3) Before making a parental compensation order, a magistrates' court shall explain to the parent or guardian of the child in ordinary language—
- (a) the effect of the order and of the requirements proposed to be included in it;
 - (b) the consequences which may follow (under subsection (4)(b) below) as a result of failure to comply with any of those requirements;
 - (c) that the court has power (under subsection (4)(a) below) to review the order on the application either of the parent or guardian or of the local authority.
- (4) A magistrates' court which has made a parental compensation order may make an order under subsection (5) below if while the order is in force—
- (a) it appears to the court, on the application of the local authority, or the parent or guardian subject to the order, that it is appropriate to make an order under subsection (5); or
 - (b) it is proved to the satisfaction of the court, on the application of the local authority, that the parent or guardian subject to it has failed to comply with any requirement included in the order.
- (5) An order under this subsection is an order discharging the parental compensation order or varying it—
- (a) by cancelling any provision included in it; or
 - (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power.
- (6) Where an application under subsection (4) above for the discharge of a parental compensation order is dismissed, no further application for its discharge shall be made under that subsection by any person except with the consent of the court which made the order.
- (7) References in this section to the magistrates' court which made a parental compensation order include any magistrates' court acting in the same local justice area as that court.

Parental compensation orders: appeal

- (1) If a magistrates' court makes a parental compensation order, the parent or guardian may appeal against the making of the order, or against the amount of compensation specified in the order.
- (2) The appeal lies to the Crown Court.
- (3) On the appeal the Crown Court—
 - (a) may make such orders as may be necessary to give effect to its determination of the appeal;
 - (b) may also make such incidental or consequential orders as appear to it to be just.
- (4) Any order of the Crown Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes of section 13C above, be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the Crown Court.
- (5) A person in whose favour a parental compensation order is made shall not be entitled to receive any compensation under it until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

Effect of parental compensation order on subsequent award of damages in civil proceedings

- (1) This section has effect where—
 - (a) a parental compensation order has been made in favour of any person in respect of any taking or loss of property or damage to it; and
 - (b) a claim by him in civil proceedings for damages in respect of the taking, loss or damage is then to be determined.
- (2) The damages in the civil proceedings shall be assessed without regard to the parental compensation order, but the claimant may recover only an amount equal to the aggregate of the following—
 - (a) any amount by which they exceed the compensation; and
 - (b) a sum equal to any portion of the compensation which he fails to recover.
- (3) The claimant may not enforce the judgment, so far as it relates to such a sum as is mentioned in subsection (2)(b) above, without the permission of the court.”

- 3 (1) Section 8 (parenting orders) is amended as follows.
- (2) In subsection (1), after paragraph (a) insert—

“(aa) a parental compensation order is made in relation to a child’s behaviour;”.
- (3) In subsection (6)(a)—
 - (a) after “paragraph (a)” insert “, (aa)”,

Status: This is the original version (as it was originally enacted).

- (b) after “child safety order,” insert “parental compensation order.”
- 4 In section 18 (interpretation of Chapter 1), in subsection (1), after the definition of “local child curfew scheme” insert—
- ““parental compensation order” has the meaning given by section 13A(1) above;”.
- 5 In section 114 (orders and regulations), in subsection (3), after “section” insert “13A(5),”.
- 6 The amendments made by paragraph 2 of this Schedule do not apply in relation to any conduct which occurred before the coming into force of that paragraph.

PART 2

NORTHERN IRELAND

- 7 The Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) is amended as provided in paragraphs 8 and 9.
- 8 After Article 36 insert—

“Parental compensation orders

- 36ZA(1) A magistrates' court may make an order under this Article (a “parental compensation order”) if on the application of a person of a description specified for the purpose in an order made by the Secretary of State (referred to in this Article and in Articles 36ZB and 36ZC as the “applicant”) the court is satisfied, on the civil standard of proof—
- (a) that the condition mentioned in paragraph (2) is fulfilled with respect to a child under the age of 10; and
 - (b) that it would be desirable to make the order in the interests of preventing a repetition of the behaviour in question.
- (2) The condition is that the child has taken, or caused loss of or damage to, property in the course of—
- (a) committing an act which, if he had been aged 10 or over, would have constituted an offence; or
 - (b) acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself.
- (3) A parental compensation order is an order which requires any person specified in the order who is a parent or guardian of the child to pay compensation of an amount specified in the order to any person or persons specified in the order who is, or are, affected by the taking of the property or its loss or damage.
- (4) The amount of compensation specified may not exceed £5,000 in all.
- (5) The Secretary of State may by order amend paragraph (4) so as to substitute a different amount.

Status: This is the original version (as it was originally enacted).

- (6) For the purposes of collection and enforcement, a parental compensation order is to be treated as if it were a sum adjudged to be paid on the conviction by the magistrates' court which made the order of the person or persons specified in the order as liable to pay the compensation.
- (7) An order under paragraph (1) or (5) is subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument; and, accordingly, section 5 of the Statutory Instruments Act 1946 (c. 36) applies to such an order.

Parental compensation orders: the compensation

36ZB) When specifying the amount of compensation for the purposes of Article 36ZA(3), the magistrates' court shall take into account—

- (a) the value of the property taken or damaged, or whose loss was caused, by the child;
 - (b) any further loss which flowed from the taking of or damage to the property, or from its loss;
 - (c) whether the child, or any parent or guardian of his, has already paid any compensation for the property (and if so, how much);
 - (d) whether the child, or any parent or guardian of his, has already made any reparation (and if so, what it consisted of);
 - (e) the means of those to be specified in the order as liable to pay the compensation, so far as the court can ascertain them;
 - (f) whether there was any lack of care on the part of the person affected by the taking of the property or its loss or damage which made it easier for the child to take or damage the property or to cause its loss.
- (2) If property taken is recovered before compensation is ordered to be paid in respect of it—
- (a) the court shall not order any such compensation to be payable in respect of it if it is not damaged;
 - (b) if it is damaged, the damage shall be treated for the purposes of making a parental compensation order as having been caused by the child, regardless of how it was caused and who caused it.
- (3) The court shall specify in the order how and by when the compensation is to be paid (for example, it may specify that the compensation is to be paid by instalments, and specify the date by which each instalment must be paid).
- (4) For the purpose of ascertaining the means of the parent or guardian, the court may, before specifying the amount of compensation, order him to provide the court, within such period as it may specify in the order, such a statement of his financial circumstances as the court may require.
- (5) A person who without reasonable excuse fails to comply with an order under paragraph (4) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) If, in providing a statement of his financial circumstances pursuant to an order under paragraph (4), a person—
- (a) makes a statement which he knows to be false in a material particular;

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- (b) recklessly provides a statement which is false in a material particular; or
 - (c) knowingly fails to disclose any material fact,
- he is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) Proceedings in respect of an offence under paragraph (6) may, despite anything in Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months of its first discovery by the applicant, whichever period expires earlier.
 - (8) Paragraphs (1)(e) and (4) to (7) do not apply in the case of an order specifying an authority as liable to pay the compensation.

Parental compensation orders: supplemental

- 36Z(1) Before deciding whether or not to make a parental compensation order in favour of any person, the magistrates' court shall take into account the views of that person about whether a parental compensation order should be made in his favour.
- (2) Before making a parental compensation order, the magistrates' court shall obtain and consider information about the child's family circumstances and the likely effect of the order on those circumstances.
 - (3) Before making a parental compensation order, a magistrates' court shall explain to the parent or guardian of the child in ordinary language—
 - (a) the effect of the order and of the requirements proposed to be included in it;
 - (b) the consequences which may follow (under paragraph (4)(b)) as a result of failure to comply with any of those requirements;
 - (c) that the court has power (under paragraph (4)(a)) to review the order on the application either of the parent or guardian or of the applicant.
 - (4) A magistrates' court which has made a parental compensation order may make an order under paragraph (5) if while the order is in force—
 - (a) it appears to the court, on the application of the applicant, or the parent or guardian subject to the order, that it is appropriate to make an order under paragraph (5); or
 - (b) it is proved to the satisfaction of the court, on the application of the applicant, that the parent or guardian subject to it has failed to comply with any requirement included in the order.
 - (5) An order under this paragraph is an order discharging the parental compensation order or varying it—
 - (a) by cancelling any provision included in it; or
 - (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power.

Status: This is the original version (as it was originally enacted).

- (6) Where an application under paragraph (4) for the discharge of a parental compensation order is dismissed, no further application for its discharge shall be made under that paragraph by any person except with the consent of the court which made the order.
- (7) References in this Article to the magistrates' court which made a parental compensation order include any magistrates' court acting for the same county court division as that court.

Parental compensation orders: appeal

36ZD) If a magistrates' court makes a parental compensation order, the parent or guardian may appeal against the making of the order, or against the amount of compensation specified in the order.

- (2) The appeal lies to the county court.
- (3) On the appeal the county court—
 - (a) may make such orders as may be necessary to give effect to its determination of the appeal;
 - (b) may also make such incidental or consequential orders as appear to it to be just.
- (4) Any order of the county court made on an appeal under this Article (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes of Article 36ZC, be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the county court.
- (5) A person in whose favour a parental compensation order is made shall not be entitled to receive any compensation under it until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

Effect of parental compensation order on subsequent award of damages in civil proceedings

- 36ZE) This Article has effect where—
- (a) a parental compensation order has been made in favour of any person in respect of any taking or loss of property or damage to it; and
 - (b) a claim by him in civil proceedings for damages in respect of the taking, loss or damage is then to be determined.
- (2) The damages in the civil proceedings shall be assessed without regard to the parental compensation order, but the claimant may recover only an amount equal to the aggregate of the following—
 - (a) any amount by which they exceed the compensation; and
 - (b) a sum equal to any portion of the compensation which he fails to recover.
 - (3) The claimant may not enforce the judgment, so far as it relates to such a sum as is mentioned in paragraph (2)(b), without the leave of the court.”

- 9 In Article 2 (interpretation), in paragraph (2), in the appropriate place insert—
““parental compensation order” has the meaning given by Article 36ZA(1);”.
- 10 The amendments made by paragraph 8 of this Schedule do not apply in relation to any conduct which occurred before the coming into force of that paragraph.