



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 4

#### OTHER CRIMINAL JUSTICE PROVISIONS

##### *Miscellaneous*

#### **61 Compensation for miscarriages of justice**

- (1) The Criminal Justice Act 1988 (c. 33) has effect subject to the following amendments.
- (2) Section 133 (compensation for miscarriages of justice) is amended as follows.
- (3) At the end of subsection (2) (compensation only payable if application for compensation is made) insert “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.”
- (4) For subsection (4A) substitute—

“(4A) Section 133A applies in relation to the assessment of the amount of the compensation.”
- (5) After subsection (5) (meaning of “reversed” in relation to a conviction) insert—

“(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,

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*Status: This is the original version (as it was originally enacted).*

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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 Supreme Court Act 1981.”

(6) In subsection (6) (meaning of suffering punishment as a result of conviction) after “this section” insert “and section 133A”.

(7) After section 133 insert—

**“133A Miscarriages of justice: amount of compensation**

- (1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 133 for a miscarriage of justice.
- (2) In assessing so much of any compensation payable under section 133 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—
  - (a) the seriousness of the offence of which the person was convicted and the severity of the punishment suffered as a result of the conviction, and
  - (b) the conduct of the investigation and prosecution of the offence.
- (3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 133 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following—
  - (a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and
  - (b) any other convictions of the person and any punishment suffered as a result of them.
- (4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 133 is to be a nominal amount only.
- (5) The total amount of compensation payable to or in respect of a person under section 133 for a particular miscarriage of justice must not exceed the overall compensation limit.

That limit is—

  - (a) £1 million in a case to which section 133B applies, and
  - (b) £500,000 in any other case.
- (6) The total amount of compensation payable under section 133 for a person's loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.

That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.

- (7) The Secretary of State may by order made by statutory instrument amend subsection (5) or (6) so as to alter any amount for the time being specified as the overall compensation limit or the earnings compensation limit.
- (8) No order may be made under subsection (7) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

### **133B Cases where person has been detained for at least 10 years**

- (1) For the purposes of section 133A(5) this section applies to any case where the person concerned (“P”) has been in qualifying detention for a period (or total period) of at least 10 years by the time when—
  - (a) the conviction is reversed, or
  - (b) the pardon is given,as mentioned in section 133(1).
- (2) P was “in qualifying detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
  - (a) by virtue of a sentence passed in respect of the relevant offence,
  - (b) under mental health legislation by reason of P’s conviction of that offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P’s having been remanded in custody in connection with the relevant offence or with any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (3) In calculating the period (or total period) during which P has been in qualifying detention as mentioned in subsection (1), no account is to be taken of any period of time during which P was both—
  - (a) in qualifying detention, and
  - (b) in excluded concurrent detention.
- (4) P was “in excluded concurrent detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
  - (a) during the term of a sentence passed in respect of an offence other than the relevant offence,
  - (b) under mental health legislation by reason of P’s conviction of any such other offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P’s having been remanded in custody in connection with an offence for which P was subsequently convicted other than—
    - (i) the relevant offence, or
    - (ii) any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.

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- (5) But P was not “in excluded concurrent detention” at any time by virtue of subsection (4)(a), (b) or (c) if P’s conviction of the other offence mentioned in that provision was quashed on appeal, or a pardon was given in respect of it.
- (6) In this section—
- “mental health legislation” means—
- (a) Part 3 of the Mental Health Act 1983,
- (b) Part 3 of the Mental Health (Northern Ireland) Order 1986, or
- (c) the provisions of any earlier enactment corresponding to Part 3 of that Act or Part 3 of that Order;
- “the relevant offence” means the offence in respect of which the conviction is quashed or the pardon is given (but see subsection (7));
- “remanded in custody” is to be read in accordance with subsections (8) and (9);
- “reversed” has the same meaning as in section 133 of this Act.
- (7) If, as a result of the miscarriage of justice—
- (a) two or more convictions are reversed, or
- (b) a pardon is given in respect of two or more offences,
- “the relevant offence” means any of the offences concerned.
- (8) In relation to England and Wales, “remanded in custody” has the meaning given by section 242(2) of the Criminal Justice Act 2003, but that subsection applies for the purposes of this section as if any reference there to a provision of the Mental Health Act 1983 included a reference to any corresponding provision of any earlier enactment.
- (9) In relation to Northern Ireland, “remanded in custody” means—
- (a) remanded in or committed to custody by an order of a court, or
- (b) remanded, admitted or removed to hospital under Article 42, 43, 45 or 54 of the Mental Health (Northern Ireland) Order 1986 or under any corresponding provision of any earlier enactment.”
- (8) In section 172 (extent) in subsection (3) (provisions extending to Northern Ireland as well as England and Wales) for “section 133” substitute “sections 133 to 133B”.
- (9) This section extends to England and Wales and Northern Ireland.