

WINDRUSH COMPENSATION SCHEME (EXPENDITURE)

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Windrush Compensation Scheme (Expenditure) as introduced in the House of Commons on 8 January 2020 (Bill 4).

- These Explanatory Notes have been provided by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1. This Bill establishes the financial authority (necessary for regularity reasons) to enable the Home Office to make compensation awards for a specific compensation scheme. Further information on the Scheme itself, including details of eligibility, how to claim and rates of compensation can be found online at www.gov.uk/guidance/windrush-compensation-scheme.

Policy background

2. The Windrush Compensation Scheme is intended to provide redress for certain losses and/or detriment experienced by some who came to the UK legally many years ago and are entitled to live and work here; such effects caused by being unable satisfactorily to evidence their lawful right to stay in the UK, with this inability arising primarily from measures put in place over time to tackle illegal immigration. These measures were not intended to have negative impacts on British Citizens or those who are lawfully resident in the UK.
3. These measures to tackle illegal immigration were built up over many years. From the 1980s, successive governments introduced measures to combat illegal immigration. The first NHS treatment charges for overseas visitors and illegal migrants were introduced in 1982. Checks by employers on someone's right to work were first introduced in 1997, measures on access to benefits in 1999, civil penalties for employing illegal migrants in 2008, and the most recent measures in the Immigration Acts of 2014 and 2016 introduced checks by landlords before property is rented and checks by banks on account holders. These steps were intended to combat illegal migration, but had an unintended, and sometimes devastating, impact on people here legally yet who have struggled to get the documentation to prove their status. Those most affected are often referred to as the 'Windrush generation' (in reference to the 'Empire Windrush', one of the first ships that brought men and women from the Caribbean to the United Kingdom in 1948, in response to labour shortages following the Second World War).
4. On 10 May 2018, the Government launched a 'call for evidence' from those of the Windrush generation, followed on 19 July 2018 by a consultation process that ran until 16 November 2018. The responses to the call for evidence and the consultation influenced the design of the Windrush Compensation Scheme launched in April 2019.
5. Almost everyone originally from a Commonwealth country who arrived before 1 January 1973 is included via the eligibility criteria, which can be viewed online at www.gov.uk/guidance/windrush-compensation-scheme. Those who have a right of abode or settled status (or are now a British citizen) and arrived to live in the UK before 31 December 1988 will also be eligible to apply regardless of nationality on arrival - even if not a Commonwealth citizen. The Scheme is also open to (i) children and grandchildren of Commonwealth citizens in certain circumstances; (ii) the estates of those who are now deceased but who would have otherwise been eligible to claim compensation; and, (iii) close family members of eligible claimants, where there has

been a significant impact on their life or where there is evidence of certain direct financial costs.

6. The Scheme is open to claims for two years, with the possibility of extension. Government expenditure needs to meet the expectations of financial regularity in relation to the 1932 Concordat and *Managing Public Money*¹. This Bill ensures that awards made under the scheme meet those expectations. The Secretary of State already has powers under the common law to make awards under the scheme, which derive from the Crown's status as a corporation possessing legal personality under long established principles for the conduct of government business.
7. The Home Office will publish information on the operation of the scheme in due course, including on the number of claims submitted, the number of claims paid and the overall amount paid under the Scheme.

Legal background

8. The relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

9. As explained in clause 2, the provisions in the Bill extend and apply to England and Wales, Scotland, and Northern Ireland.
10. No provisions touch on matters that are devolved to Scotland or Wales, or transferred to Northern Ireland.
11. The matters to which the provisions of the Bill related are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales, or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill.
12. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales, or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
13. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding

¹ The 1932 Concordat is an agreement, made by way of correspondence and minute between the Public Accounts Committee and HM Treasury, that departments would not spend without adequate authorities in place. Where this concerns continuing functions, particularly functions expected to extend beyond a year, it is normally the case that those powers and duties to be exercised will be defined by a specific statute. Further information can be found online at Annex 2.3 of *Managing Public Money* at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742189/Managing_Public_Money_MPM_with_annexes_2018.pdf.

legislative consent motions and matters relevant to Standing Orders Nos 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1:

14. This provides Parliamentary authority for expenditure (from money provided by Parliament) under or in connection with the Windrush Compensation Scheme.
15. This clause also defines the Scheme as being the scheme published by the Home Office on 3 April 2019 that provides compensation for certain categories of persons in recognition of difficulties arising out of an inability to demonstrate lawful immigration status.

Clause 2:

16. Clause 2 describes the extent, commencement and short title.

Financial implications of the Bill

17. An impact assessment was conducted by the Home Office before establishing the Windrush Compensation Scheme. This was published alongside the response to the consultation.
18. This shows that there is necessarily uncertainty about the total cost of the scheme, due to significant uncertainty about the likely volume and nature of claims. Costs are estimated in line with the planning assumption of 15,000 eligible claimants, as well as low and high-volume estimates that are categorised into loss categories. Operational costs are currently solely based on a planning assumption of 15,000 claims and are currently estimated in excess of £4m per year over three years. Set up costs have not been factored into the overall costs. Estimated compensation costs based on 15,000 claimants ranges from £120-£310m.

Parliamentary approval for financial costs or for charges imposed

19. A money resolution is required for the Bill in respect of the expenditure under or in connection with the Windrush Compensation Scheme which is authorised under clause 1(1). No ways and means resolution is required as the Bill does not authorise any new taxation or similar charges.

Compatibility with the European Convention on Human Rights

20. The Bill itself does not engage any ECHR rights. Its purpose is to provide appropriate financial authority for payments made under the Windrush Compensation Scheme.

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The ECHR implications of the Scheme itself were extensively considered before the Scheme was published.

21. The Government therefore considers that the Windrush Compensation Scheme (Expenditure) Bill is compatible with the European Convention on Human Rights. Accordingly, the Secretary of State for the Home Department has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

Related documents

22. The following documents are relevant to the Bill and can be read at the stated locations:
 - Impact Assessment
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791489/2019-04-01_Windrush_Compensation_Impact_Assessment_.pdf
 - Managing Public Money
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742189/Managing_Public_Money_MPM_with_annexes_2018.pdf
 - Windrush Compensation Scheme guidance
www.gov.uk/guidance/windrush-compensation-scheme

Annex A - Territorial extent and application in the United Kingdom

The provisions of the Bill extend and apply to England and Wales, Scotland, and Northern Ireland.

Minor and consequential effects

There are no minor or consequential effects.

Subject matter and legislative competence of devolved legislatures

The subject matter of the Bill is immigration, which is outside the legislative competence of the devolved legislatures.

Provision		Extends to England and Wales and applies to England?	Extends to England and Wales and applies to Wales	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1		Yes	Yes	Yes	Yes	No
Clause 2		Yes	Yes	Yes	Yes	No

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