

WINDRUSH COMPENSATION SCHEME (EXPENDITURE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Windrush Compensation Scheme (Expenditure) Bill as brought from the House of Commons on 25 March 2020 (HL Bill 111).

- 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 (the Windrush Compensation Scheme). Further information on the scheme itself, including details of eligibility, how to claim and rates of compensation can be found online at <http://www.gov.uk/guidance/windrush-compensation-scheme>.

Policy background

- 2 The Windrush Compensation Scheme is intended to provide redress for certain losses and detriment experienced by those who came to the UK legally many years ago and are entitled to live and work here, but who were unable to evidence those rights. This inability to evidence those rights arose primarily from measures put in place over time to tackle illegal immigration and protect taxpayer money. These measures were not intended to have negative impacts on British Citizens or those who are lawfully resident in the UK.
- 3 Measures to tackle illegal immigration and protect taxpayer money were introduced by successive governments over many years, including immigration enforcement powers and measures on access to work, benefits and services. The first NHS treatment charges for overseas visitors and illegal migrants were introduced in 1982. Right to work checks 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. Although these measures were designed to tackle illegal migration, they have had an unintended and sometimes devastating impact on people residing in the United Kingdom 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 The Government has taken a number of steps to give redress to those members of the Windrush generation who have been affected. On 10 May 2018, the Government launched a 'call for evidence' from members 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 in the eligibility criteria for the Scheme, which can be viewed online at www.gov.uk/guidance/windrush-compensation-scheme. Those who are lawfully in the United Kingdom (or are now a British citizen) and arrived to live in the UK on or 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 until 2 April 2023, 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 awards made under the scheme meet those expectations. It does not make any changes to the operation of the scheme. The Secretary of State already has powers under 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 published information on the operation of the scheme, including on the number of claims submitted, the number of claims paid, and the overall amount paid under the scheme, on 27 February. That information can be found here: <https://www.gov.uk/government/publications/windrush-compensation-scheme-data-february-2020>. The Home Office will continue to publish this data on a quarterly basis.

Legal background

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

Territorial extent and application

- 9 As set out 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 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.

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.

Commentary on provisions of Bill

Clause 1: Expenditure on the Windrush Compensation Scheme

- 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: Extent, commencement and short title

- 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 in April 2019.
- 18 A revised impact assessment was published on 6 February 2020.
- 19 This continues to show that there is uncertainty about the total cost of the scheme due to uncertainty about the likely volume and nature of claims. Costs are estimated in line with the planning assumption of 11,500 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 11,500 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 11,500 claimants range from £90-250m.

Parliamentary approval for financial costs or for charges imposed

- 20 A money resolution was passed by the House of Commons on 10 February 2020 authorising the payment out of money provided by Parliament of expenditure incurred 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

- 21 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. The ECHR implications of the scheme itself were extensively considered before it was launched.
- 22 The Government therefore considers that the Windrush Compensation Scheme (Expenditure) Bill is compatible with the European Convention on Human Rights. Accordingly, Baroness Williams of Trafford has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

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Related documents

23 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/864199/Windrush_compensation_policy_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

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

Minor and consequential effects

25 There are no minor or consequential effects.

Subject matter and legislative competence of devolved legislatures

26 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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Ordered by the House of Lords to be printed, 25 March 2020

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