EXPLANATORY MEMORANDUM TO

THE COMPENSATION FOR MISCARRIAGES OF JUSTICE (ALTERATION OF OVERALL COMPENSATION LIMITS) ORDER 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister Davies-Jones, Parliamentary Under-Secretary of State at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Helen Evans and Ruth Hudson, Deputy Directors for Criminal Appeals Policy and Miscarriages of Justice at the Ministry of Justice, confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Elizabeth Peck at the Ministry of Justice (telephone number: 07743184665, email: mojas@justice.gov.uk) can be contacted with any queries regarding the changes that this instrument makes to the Criminal Justice Act 1988.

3.2 Richard Bishop at the Ministry of Defence (Microsoft Teams: +44 303 372 4409, email: Richard.Bishop114@mod.gov.uk and People-CEJ-SJDC@modgovuk.onmicrosoft.com) can be contacted with any queries regarding the changes that this instrument makes to the Armed Forces Act 2006.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order increases the existing overall compensation limits (known as the "caps") that apply to compensation paid by the Secretary of State under the miscarriage of justice compensation schemes provided for at ss133 – 133B of the Criminal Justice Act 1988 (CJA 1988) and ss276 – 276B of the Armed Forces Act 2006 (AFA 2006) by 30%. This will mean that the caps on compensation are increased from £1,000,000 to £1,300,000 for individuals who have spent at least 10 years in prison and from £500,000 to £650,000 for any other case.

Where does the legislation extend to, and apply?

4.2 Articles 1(3) to (5) set out the extent of this instrument (that is, the jurisdiction which the instrument forms part of the law). The extent of this instrument in respect of the changes made to the compensation scheme provided for in the CJA 1988 is England and Wales and Northern Ireland (see Articles 1(3) and (4)). The changes made by this instrument to the compensation scheme provided for in the AFA 2006 have the same

extent as the AFA 2006 (United Kingdom, the Isle of Man and the British Overseas Territories, except Gibraltar). This is set out in Article 1(3) (which provides that the extent of these changes is the United Kingdom) and Article 1(5) (which provides that the references in section 384 of the AFA 2006 to that Act include the changes made to the AFA 2006 by this instrument – the effect of this is that these changes extend to the Isle of Man and the British Overseas Territories (except Gibraltar) under section 384(2) of the AFA 2006).

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Northern Ireland in respect of the changes to the compensation scheme provided for in the CJA 1988. More specifically, the increased caps will apply to applications for compensation determined and for which compensation is payable by the Secretary of State, which includes cases in England and Wales and cases in Northern Ireland that are determined by the Secretary of State on national security grounds. The territorial application of this instrument in respect of the changes made to the compensation scheme provided for in the AFA 2006 is such that the instrument applies to persons subject to service law wherever they are in the world. This encompasses regular (full-time) forces (jurisdiction at all times and wherever they are), reserve forces (jurisdiction wherever they are, if they are at that moment acting as members of reserve forces), and certain civilians subject to service discipline (jurisdiction if they are outside the UK). More specifically, the increased caps will apply to applications for compensation determined and for which compensation is payable by the Secretary of State under the AFA 2006 scheme.

5. Policy Context

What is being done and why?

5.1 There are two existing caps that apply to compensation paid under both miscarriage of justice compensation schemes: a maximum compensation award of £1 million where the victim of a miscarriage of justice has spent at least 10 years in prison related to the quashed/pardoned conviction, and a cap of £500,000 in any other case. The caps are provided for in section 133A(5) of the CJA 1988 and section 276A(5) of the AFA 2006. The caps were introduced in 2008 by amendments to the CJA 1988 and the AFA 2006 made by the Criminal Justice and Immigration Act 2008.

5.2 In relation to the CJA 1988 scheme, section 133 of the CJA 1988, which extends throughout the United Kingdom, provides for the payment of compensation to those who have suffered a miscarriage of justice following a conviction in the civilian justice system where the statutory test for compensation is met. Applications for miscarriages of justice compensation under the CJA 1988 are determined, and compensation is payable, by: (1) the Secretary of State for Justice for cases in England and Wales; (2) Scottish Ministers for cases in Scotland; and (3) the Department of Justice in Northern Ireland (NI DoJ) for cases in Northern Ireland, save for certain cases involving sensitive national security information which are determined and for which compensation is payable by the Secretary of State for Northern Ireland.

5.3 The caps apply to cases in England and Wales and Northern Ireland. Cases in Scotland are not subject to any caps on compensation.

5.4 Section 133A(7) of the CJA 1988 includes a power for the Secretary of State to amend the caps in relation to compensation payable by them by order. In exercise of this power, this instrument increases each cap by 30% in relation to compensation payable by the Secretary of State under the CJA 1988 - so that the cap that applies to compensation payable to individuals who have been detained for at least 10 years is

£1,300,000 and the cap for compensation payable in any other case is £650,000. This instrument does not change the caps specified in section 133A(5) that apply to compensation payable by the NI DoJ.

5.5 In relation to the AFA 2006 scheme, section 276 of the AFA 2006 provides for the payment of compensation to those who have suffered a miscarriage of justice following conviction by the Court Martial where the statutory test is met. Applications for miscarriages of justice compensation under the AFA 2006 are determined and compensation is payable by the Secretary of State for Defence. Section 276A(7) of the AFA 2006 includes a power for the Secretary of State to amend the caps that apply to compensation payable under the AFA 2006 scheme by order. In exercise of this power, this instrument increases each cap in section 276A(5) of the AFA 2006 by 30% - so that the cap that applies to compensation payable to individuals who have been detained for at least 10 years is £1,300,000 and the cap for compensation payable in any other case is £650,000.

5.6 While there is no obligation for the Secretary of State to increase the caps, this increase of 30% aims to ensure that those who have suffered a miscarriage of justice will continue to be appropriately compensated whilst also protecting public finances. A 30% increase was chosen as it raises the caps by a substantial amount, whilst keeping in mind the need to protect the public purse. The caps on miscarriages of justice compensation have not been amended in either scheme since their introduction in 2008, and their real terms value has changed in the period since the caps were set. The Government therefore considers that it is reasonable to increase the caps by 30% at this time.

What was the previous policy, how is this different?

5.7 When introduced, the caps on compensation were set at £1 million where the victim of a miscarriage of justice had spent at least 10 years in prison or £500,000 in any other case. These caps were introduced to provide protection to the public purse whilst also appropriately compensating those who have suffered a miscarriage of justice. For the reasons set out above, this Order changes those caps in relation to compensation payable by the Secretary of State under the CJA 1988 and AFA 2006 schemes so that they will increase by 30% to £1,300,000 for individuals who have spent at least 10 years in prison and £650,000 in any other case.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 133A(7) of the CJA 1988 provides the Secretary of State with a power to amend the caps in relation to compensation payable by them under the CJA 1988 scheme by order. In addition, section 276A(7) of the AFA 2006 provides the Secretary of State with a power to amend the caps that apply to compensation payable under the AFA 2006 scheme by order. This instrument is being made to increase the caps in both schemes, in reliance on these powers.

6.2 The legal effect of this instrument is that it increases the caps that apply to miscarriages of justice compensation payable by the Secretary of State to eligible applicants under the CJA 1988 and AFA 2006 schemes.

Why was this approach taken to change the law?

6.3 This approach was chosen because it is the most expedient route to enact the desired change and so that the increases can be applied to cases as quickly as possible.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was undertaken because the amount of the increase to the caps was chosen in part because of the need to protect public finances and is what the Government considers to be affordable. There was therefore limited value in consulting on the amount of the increase and there is no statutory duty to consult on amending the caps.

8. Applicable guidance

8.1 This SI does not implement or require guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen. The measure is not a regulatory provision and is not caught by the Better Regulation Framework. It will not generate any significant burden for businesses or charities.

Impact on businesses, charities and voluntary bodies

9.2 There are no significant impacts on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There are no significant impacts on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 There is no formal requirement to review or monitor this legislation. However, the Ministry of Justice does review and publish data about Miscarriages of Justice Application Service application statistics on an annual basis[1]. This data includes information on the number of applications granted compensation and the amount of compensation awarded. The data spans 2016-2025, because the publications only began in 2024 and this is the period for which there is existing verified data. The first publication covered 2016/17-2023/24 and the latest one covers 2024/25.

10.2 This instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument will come into force on the day after the day on which it is made. Although the 21-day convention does not apply to affirmative instruments, an instrument which significantly diminishes the legal rights of persons affected, imposes new duties on such persons which are significantly more onerous than before or creates criminal sanctions for a failure to comply with an obligation should not usually be brought into force earlier than 21 days after it is made. This instrument

[1] https://www.gov.uk/government/publications/miscarriage-of-justice-application-service-mojas-claims-management-information-april-2016-to-march-2025

does not fall into any of these categories and will confer benefits only to eligible applicants for miscarriages of justice compensation under the CJA 1988 and AFA 2006 schemes by increasing the caps that apply to compensation. It is therefore reasonable for this instrument to come into force on the day after the day on which it is made.

11.2 The powers in section 133A(7) of the CJA 1988 and section 276A(7) of the AFA 2006 apply to amending the caps in relation to miscarriages of justice compensation payable by the Secretary of State. Article 4 of the instrument therefore specifies that the increased caps under both the CJA 1988 and AFA 2006 schemes will apply to: (a) applications for compensation made on or after the date the instrument comes into force; and (b) applications for compensation submitted before that date but where the Independent Assessor (who assesses the compensation amount in eligible cases) has not yet determined the amount of compensation to be awarded. This has limited retrospective effect in that the increased caps will apply to applications made before the entry into force of the instrument. However, this is within the powers of the parent Acts and confers benefits only to those applicants.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Compensation for Miscarriages of Justice (Alteration of Overall Compensation Limits) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").