

WINDRUSH COMPENSATION SCHEME (EXPENDITURE) ACT 2020

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Windrush Compensation Scheme (Expenditure) Act 2020 (c. 8) which received Royal Assent on 8 June 2020.

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

Table of Contents

Subject	Page of these Notes
Overview of the Act	2
Policy background	2
Legal background	3
Territorial extent and application	3
Commentary on provisions of Act	3
Section 1: Expenditure on the Windrush Compensation Scheme	3
Section 2: Extent, commencement and short title	4
Commencement	4
Related documents	4
Annex A – Hansard References	5

Overview of the Act

- 1 The purpose of the Windrush Compensation Scheme (Expenditure) Act is to establish 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 was launched on 3 April 2019. It 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.
- 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 Act 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 for the Home Office 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 first 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 2020. 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 section 2, the provisions in the Act 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.

Commentary on provisions of Act

Section 1: Expenditure on the Windrush Compensation Scheme

- 11 This section provides Parliamentary authority for expenditure (from money provided by Parliament) under or in connection with the Windrush Compensation Scheme.
- 12 This section 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.

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.

Section 2: Extent, commencement and short title

13 Section 2 describes the extent, commencement and short title.

Commencement

14 Section 2(2) sets out that the provisions of the Act commenced on Royal Assent.

Related documents

15 The following documents are relevant to the Act and can be read at the stated locations:

- Impact Assessment for the Windrush Compensation Scheme
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 – Hansard References

16 The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
House of Commons		
Introduction and First Reading	8 January 2020	Vol. 669 Col. 388
Second Reading	10 February 2020	Vol. 671 Cols. 618-670
Committee Stage, Report and Third Reading	24 March 2020	Vol. 674 Cols. 299-314
House of Lords		
Introduction and First Reading	25 March 2020	Vol. 802
Second Reading, Committee Stage, Report and Third Reading	21 April 2020	Vol. 803 Cols. 23-48
Royal Assent	8 June 2020	Lords: Vol. 803 Col. 1541

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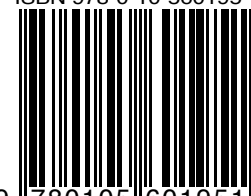
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