

**National Security (Legislative Provisions) Bill:  
Compensation for proscription mechanism**

**Introduction**

This paper sets out the Administration's response in respect of the question on compensation for organizations wrongfully proscribed, as raised during the meeting of the Bills Committee on 31 May 2003.

**The position at common law**

2. The position at common law regarding circumstances under which damages can be claimed as a result of an administration decision (of which the proscription decision is one example) has been examined, and is set out as follows.

3. Wade & Forsyth's *Administrative Law* (8<sup>th</sup> Ed, p.753, paragraph 2) states that -

“Although important questions remain to be answered, there is a clear tendency, in England at least, against applying the ordinary law of negligence to discretionary administrative decisions. The decisions of licensing authorities, for example, may be held ultra vires and quashed if proper attention is not given to the case. But there is no indication that actions for damages will lie for any resulting loss, merely because negligence can be shown.”

4. In *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004 Lord Reid (at 1031) stated -

“When Parliament confers a discretion ..... there may, and almost certainly will, be errors of judgment in exercising such a discretion and Parliament cannot have intended that members of the public should be entitled to sue in respect of such errors. But there must come a stage when the discretion is exercised so carelessly or unreasonably that there has been no real exercise of the discretion which Parliament has conferred. The person exercising the discretion has acted in abuse or excess of his power. Parliament cannot be supposed to have granted immunity to persons who do that.”

5. The issue came before the English Court of Appeal in May 2002 in *Hughes & Others v HM Customs and Excise*. In that case Hooper J, in

considering an argument that Article 1 of the First Protocol of the European Convention on Human Rights required that compensation be paid, made the following observations -

“I entirely accept that an acquitted (or indeed unconvicted) defendant must for these purposes be regarded as an innocent person ..... I cannot accept, however, that for this reason it must be regarded as disproportionate, still less arbitrary (another contention advanced by the respondent) to leave the defendant against whom restraint and receivership orders have been made uncompensated for such loss as they may have caused him – unless, of course, by establishing “some serious default” on the prosecutor’s part he can bring himself within the strict requirement of section 89 [of the Criminal Justice Act].

It is common ground that acquitted defendants are not, save in the most exceptional circumstances, entitled to compensation for being deprived of their liberty whilst on remand or indeed for any other heads of loss suffered through being prosecuted. In my judgment it is no more unfair, disproportionate or arbitrary that they should be uncompensated too for any adverse effects that restraint and receivership orders may have had upon their assets.”

### **Statutory compensation provisions?**

6. The common law already provides clear principles on the issue of compensation in respect of administrative decisions. We do not see the need to deviate from the common law in this area, nor the need to re-state the common law position in the National Security (Legislative Provisions) Bill.

Security Bureau  
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