



Victims and Witnesses (Scotland) Act 2014 2014 asp 1

Sentencing

24 Duty to consider making compensation order

In section 249 of the 1995 Act (compensation order against convicted person), after subsection (4) insert—

- “(4A) In any case where it would be competent for the court to make a compensation order, the court must consider whether to make a compensation order.
- (4B) Before making a compensation order, the court must take steps to ascertain the views and wishes of the victim.
- (4C) No compensation order may be made where the victim notifies the court that the victim does not wish to receive compensation from the person convicted of the offence.
- (4D) For the purposes of subsections (4B) and (4C), “victim” has the meaning given by subsections (1A) and (1C).”

25 Restitution order

After section 253 of the 1995 Act, insert—

“Restitution order

253A Restitution order where conviction of police assault etc.

- (1) This section applies where a person (“P”) is convicted of an offence under section 90(1) of the Police and Fire Reform (Scotland) Act 2012 (police assault etc.).
- (2) The court, instead of or in addition to dealing with P in any other way, may make an order to be known as a restitution order requiring P to pay an amount not exceeding the prescribed sum (as defined in section 225(8)).

- (3) The Scottish Ministers may by regulations amend subsection (2) so as to substitute for the amount for the time being specified such other amount as may be prescribed by, or determined in accordance with, the regulations.
- (4) Any amount paid in respect of a restitution order is to be paid to the clerk of any court or any other person (or class of person) authorised by the Scottish Ministers for the purpose.
- (5) Regulations under subsection (3) are subject to the negative procedure.

253B The Restitution Fund

- (1) A person to whom any amount is paid under section 253A in respect of a restitution order must pay the amount to the Scottish Ministers.
- (2) The Scottish Ministers must pay any amount received by virtue of subsection (1) into a fund to be known as the Restitution Fund.
- (3) The Scottish Ministers must establish, maintain and administer the Restitution Fund for the purpose of securing the provision of support services for persons who have been assaulted as mentioned in section 90(1) of the Police and Fire Reform (Scotland) Act 2012 (“victims”).
- (4) Any payment out of the fund may be made only to—
 - (a) a person who provides or secures the provision of support services for victims, or
 - (b) the Scottish Ministers or, with the consent of the Scottish Ministers, a person specified by order by virtue of subsection (5) in respect of outlays incurred in administering the fund.
- (5) The Scottish Ministers may delegate to such person as they may specify by order the duties imposed on them by subsection (3) of establishing, maintaining and administering the Restitution Fund.
- (6) The Scottish Ministers may by order make further provision about the administration of the Restitution Fund including provision for or in connection with—
 - (a) specifying persons or classes of person to or in respect of whom payments may be made out of the fund (but subject to subsection (4)),
 - (b) the making of payments out of the fund,
 - (c) requiring financial or other records to be kept,
 - (d) the making of reports to the Scottish Government containing such information and in respect of such periods as may be specified.
- (7) An order under subsection (5) or (6) is subject to the affirmative procedure.
- (8) In this section, “support services”, in relation to a victim, means any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim.

253C Restitution order, fine and compensation order: order of preference

- (1) Subsection (2) applies where a court considers in relation to an offence that it would be appropriate—
 - (a) to make a restitution order,
 - (b) to impose a fine, and
 - (c) to make a compensation order.
- (2) If the person convicted of the offence (“P”) has insufficient means to pay an appropriate amount under a restitution order, to pay an appropriate fine and to pay an appropriate amount in compensation, the court should prefer a compensation order and then a restitution order over a fine.
- (3) Subsection (4) applies where a court considers in relation to an offence that it would be appropriate—
 - (a) to make a restitution order, and
 - (b) to impose a fine or make a compensation order.
- (4) If P has insufficient means to pay an appropriate amount under a restitution order and to pay an appropriate fine or, as the case may be, an appropriate amount in compensation, the court should prefer a compensation order and then a restitution order over a fine.

253D Application of receipts

- (1) This section applies where the court makes a restitution order in relation to a person (“P”) convicted of an offence and also in respect of the same offence or different offences in the same proceedings—
 - (a) imposes a fine and makes a compensation order, or
 - (b) imposes a fine or makes a compensation order.
- (2) A payment by P must be applied in the following order—
 - (a) the payment must first be applied in satisfaction of the compensation order,
 - (b) the payment must next be applied in satisfaction of the restitution order,
 - (c) the payment must then be applied in satisfaction of the fine.

253E Enforcement: application of certain provisions relating to fines

- (1) The provisions of this Act specified in subsection (2) apply in relation to restitution orders as they apply in relation to fines but subject to the modifications mentioned in subsection (2) and to any other necessary modifications.
- (2) The provisions are—
 - (a) section 211(3) and (7),
 - (b) section 212,
 - (c) section 213 (with the modification that subsection (2) is to be read as if the words “or (4)” were omitted),

- (d) section 214(1) to (4) and (6) to (9) (with the modification that subsection (4) is to be read as if the words from “unless” to “decision” were omitted),
 - (e) sections 215 to 217,
 - (f) subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8),
 - (g) sections 220 to 224,
 - (h) section 248B.
- (3) In the application of the provisions of section 219 mentioned in subsection (2) (f) for the purposes of subsection (1)—
- (a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a restitution order but not vice versa,
 - (b) where a court imposes imprisonment both in respect of a fine and a restitution order, the amounts in respect of which imprisonment is imposed are to be aggregated for the purposes of section 219(2).”.

26 Victim surcharge

After section 253E of the 1995 Act (inserted by section 25), insert—

“Victim surcharge

253F Victim surcharge

- (1) This section applies where—
- (a) a person (“P”) is convicted of an offence other than an offence, or offence of a class, that is prescribed by regulations by the Scottish Ministers,
 - (b) the court does not make a restitution order, and
 - (c) the court imposes a sentence, or sentence of a class, that is so prescribed.
- (2) Except in such circumstances as may be prescribed by regulations by the Scottish Ministers, the court, in addition to dealing with P in any other way, must order P to pay a victim surcharge of such amount as may be so prescribed.
- (3) Despite subsection (2), if P is convicted of two or more offences in the same proceedings, the court must order P to pay only one victim surcharge in respect of both or, as the case may be, all the offences.
- (4) Any sum paid in respect of a victim surcharge is to be paid to the clerk of any court or any other person (or class of person) authorised by the Scottish Ministers for the purpose.
- (5) Regulations under this section may make different provision for different cases and in particular may include provision—
- (a) prescribing different amounts for different descriptions of offender,
 - (b) prescribing different amounts for different circumstances.

- (6) Where provision is made by virtue of subsection (5), the Scottish Ministers may by regulations make provision for determining which victim surcharge is payable in the circumstances mentioned in subsection (3).
- (7) Regulations under this section are subject to the affirmative procedure.

253G The Victim Surcharge Fund

- (1) A person to whom any sum is paid under section 253F(4) in respect of a victim surcharge must pay the sum to the Scottish Ministers.
- (2) The Scottish Ministers must pay any sum received by virtue of subsection (1) into a fund to be known as the Victim Surcharge Fund.
- (3) The Scottish Ministers must establish, maintain and administer the Victim Surcharge Fund for the purpose of securing the provision of support services for persons who are or appear to be the victims of crime and prescribed relatives of such persons.
- (4) Any payment out of the fund may be made only to—
 - (a) a person who is or appears to be the victim of crime,
 - (b) a prescribed relative of a person who is or appears to be the victim of crime,
 - (c) a person who provides or secures the provision of support services for persons who are or appear to be victims of crime, or
 - (d) the Scottish Ministers or, with the consent of the Scottish Ministers, a person specified by order by virtue of subsection (5) in respect of outlays incurred in administering the fund.
- (5) The Scottish Ministers may delegate to such person as they may specify by order the duties imposed on them by subsection (3) of establishing, maintaining and administering the Victim Surcharge Fund.
- (6) The Scottish Ministers may by regulations make further provision about the administration of the Victim Surcharge Fund including provision for or in connection with—
 - (a) the making of payments out of the fund,
 - (b) the keeping of financial and other records,
 - (c) the making of reports to the Scottish Government containing such information and in respect of such periods as may be specified.
- (7) An order under subsection (5) and regulations under subsection (6) are subject to the affirmative procedure.
- (8) In this section—
 - “prescribed” means prescribed by the Scottish Ministers by regulations,
 - “support services”, in relation to a person who is or appears to be the victim of crime, means any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the person or a prescribed relative of the person.
- (9) Regulations under subsections (3), (4) and (8) are subject to the negative procedure.

253H Application of receipts

- (1) This section applies where the court orders the payment of a victim surcharge in relation to a person (“P”) convicted of an offence and also in respect of the same offence or different offences in the same proceedings—
 - (a) imposes a fine and makes a compensation order, or
 - (b) imposes a fine or makes a compensation order.
- (2) A payment by P must be applied in the following order—
 - (a) the payment must first be applied in satisfaction of the compensation order,
 - (b) the payment must next be applied in satisfaction of the victim surcharge,
 - (c) the payment must then be applied in satisfaction of the fine.

253J Enforcement: application of certain provisions relating to fines

- (1) The provisions of this Act specified in subsection (2) apply in relation to victim surcharges as they apply in relation to fines but subject to the modifications mentioned in subsection (2) and to any other necessary modifications.
- (2) The provisions are—
 - (a) section 211(3) and (4),
 - (b) section 212,
 - (c) section 213 (with the modification that subsection (2) is to be read as if the words “or (4)” were omitted),
 - (d) section 214(1) to (4) and (6) to (9) (with the modification that subsection (4) is to be read as if the words from “unless” to “decision” were omitted),
 - (e) sections 215 to 218,
 - (f) subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8),
 - (g) sections 220 to 224,
 - (h) section 248B.
- (3) In the application of the provisions of section 219 mentioned in subsection (2) (f) for the purposes of subsection (1)—
 - (a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a victim surcharge but not vice versa,
 - (b) where a court imposes imprisonment both in respect of a fine and a victim surcharge, the amounts in respect of which imprisonment is imposed are to be aggregated for the purposes of section 219(2).”.