

VICTIMS AND WITNESSES (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sentencing

Section 25 – Restitution order

61. This section inserts new sections 253A to 253E into the 1995 Act, to deal with the establishment and operation of restitution orders.
62. Subsection (1) of new section 253A establishes that that section shall apply to persons who are convicted of an offence under section 90(1) (police assault etc.) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”).
63. Subsection (2) establishes the restitution order alongside other penalties (such as imprisonment, fines, Community Payback Orders etc.) as a penalty which may be imposed on persons convicted under section 90(1) of the 2012 Act. It also sets the upper limit of these orders in line with the prescribed sum (as defined in section 225(8) of the 1995 Act). Subsection (3) establishes that the Scottish Ministers have the power by regulations (subject to the negative procedure) to vary this upper limit.
64. Subsection (4) requires that the proceeds of restitution orders are to be paid to the clerk of court or any other person authorised by the Scottish Ministers. This is the same as for fines.
65. Subsection (1) of new section 253B establishes that the person to whom, under new section 253A(3), the proceeds of a restitution order are paid, must pass those proceeds on to the Scottish Ministers. Subsection (2) provides that, in turn, the Scottish Ministers must pass on the proceeds to a new fund, to be known as the Restitution Fund.
66. Subsection (3) provides for the establishment, maintenance and administration of the Restitution Fund for the purpose of securing the provision of support services to persons who have been assaulted as mentioned in section 90(1) of the 2012 Act. Subsection (4) ensures that payments may be made only to persons providing or securing the provision of support services (as defined in subsection (8)) for victims of the section 90(1) offence or to the operator of the Restitution Fund in respect of the costs of administering the Fund.
67. Subsection (5) allows the Scottish Ministers to delegate, by order, the establishment, maintenance and administration of the Restitution Fund to another individual or body. Subsection (6) allows the Scottish Ministers to make further provision, by order, for the administration of the Restitution Fund, including who may benefit from it, how payments can be made from it, and the keeping of records and the making of reports by the operator. Any orders made in exercise of these powers are subject to the affirmative procedure.

*These notes relate to the Victims and Witnesses (Scotland) Act
2014 (asp 1) which received Royal Assent on 17 January 2014*

68. Subsection (1) of new section 253C deals with the possibility that a person found guilty of an offence under section 90(1) of the 2012 Act may have a sentence imposed which could include three different financial penalties: a restitution order, a fine and a compensation order. The convicted person may have insufficient means to pay all three. In this case, in accordance with subsection (2), the court is to prefer imposing a compensation order, then a restitution order, and finally a fine.
69. Subsection (3) deals with the situation where a court considers it would be appropriate to impose two financial penalties; a restitution order and either a compensation order or a fine. In this case, under subsection (4), where the convicted person may have insufficient means to pay both, again the court should consider imposing a compensation order before a restitution order, and a restitution order before a fine.
70. Subsection (1) of new section 253D applies where a court has actually imposed a restitution order and either or both of a compensation order and a fine. Subsection (2) adopts the same logic as in new section 253C, and ensures that any payment made by the convicted individual is applied first to any compensation order, until such time as it is fully paid, then to any restitution order, until such time as that has been full paid, and then to any fine.
71. Subsection (1) of new section 253E states that a number of provisions in the 1995 Act shall apply to restitution orders in the same way as they do to fines. The provisions in question are listed in subsection (2). These include matters to do with the enforcement (sections 211 and 212 of the 1995 Act), remission (section 213), part-payment (section 220), recovery (section 221), transfer (sections 222 and 223) and mutual recognition of fines (sections 223A-T), as well as what to do in the case of default (section 216), supervision pending payment (section 217) and provisions about time for their payment (sections 214 and 215), disqualification from driving (section 248B) and imprisonment as means of enforcement or punishment for default (section 219), and discharge from imprisonment (section 224). All these provisions are to apply to restitution orders in the same way as they do to fines. Subsection (3), moreover, provides that a court may impose imprisonment as a means of punishing default on payment of a fine, but decline to do so for a restitution order but not *vice versa*. In addition, by virtue of that subsection, where imprisonment is used to punish default on payment of both a fine and a restitution order their amounts shall be aggregated to establish the appropriate duration of that imprisonment.