

Draft Order laid before the Scottish Parliament under section 253F(7) and 253G(9) of the Victims and Witnesses (Scotland) Act 2019, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

CRIMINAL LAW

The Victim Surcharge (Scotland) Regulations 2019

Made - - - - 2019
Coming into force - - 25th November 2019

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 253F and 253G(6) of the Criminal Procedure (Scotland) Act 1995⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Victim Surcharge (Scotland) Regulations 2019 and come into force in accordance with paragraphs (2) and (3).

(2) These Regulations come into force on 25 November 2019.

(3) Part 1 of these Regulations comes into force in respect of all offences committed on or after that date.

(4) For the purposes of paragraph (3), where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it is to be taken to have been committed on the first of those days.

Interpretation

2. In these Regulations—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995,

“the Fund” means the Victim Surcharge Fund established, maintained and administered under section 253G(3) of the 1995 Act and administered in accordance with these Regulations.

(1) 1995 c.46. Sections 253F and 253G were inserted by section 26 of the Victims and Witnesses (Scotland) Act 2014 (asp 1).

PART 1

The Victim Surcharge

Sentences to which the victim surcharge applies

3. For the purposes of section 253F(1)(c) of the 1995 Act, a fine is a prescribed sentence.

Imposition of the victim surcharge

4.—(1) Where a person is convicted of an offence and the court imposes a fine on that person, the victim surcharge payable by that person in accordance with section 253F(2) of the 1995 Act is the amount specified in column 2 of the table in the schedule which corresponds to the amount of the fine as shown in column 1 of the table.

(2) Where a person is convicted of more than one offence in the same proceedings, and the court imposes more than one fine on that person, the victim surcharge payable by that person in accordance with section 253F(2) of the 1995 Act is the amount specified in column 2 of the table in the schedule which corresponds to the aggregate amount of the fines as shown in column 1 of the table.

PART 2

The Victim Surcharge Fund

The administration of the Victim Surcharge Fund

5.—(1) The Fund must be administered by the Scottish Ministers in accordance with this Part.

(2) The Scottish Ministers must prepare and publish guidance about the operation of the Fund.

(3) The first guidance prepared and published under paragraph (2) must be—

- (a) published by 25 May 2020, and
- (b) laid before the Scottish Parliament as soon as reasonably practicable after publication.

(4) The guidance prepared and published by the Scottish Ministers under paragraph (2) may be revised by the Scottish Ministers from time to time.

(5) Where the guidance is revised by the Scottish Ministers under paragraph (4), the revised guidance must be laid before the Scottish Parliament as soon as reasonably practicable after it has been revised.

(6) In the administration of the Fund, the Scottish Ministers must have regard to the need to—

- (a) promote equality and diversity, and
- (b) prevent discrimination, harassment and victimisation on the basis of any of the protected characteristics listed in section 4 of the Equality Act 2010.

Making payments out of the Fund

6.—(1) No payments may be made from the Fund prior to 25 May 2020.

(2) A payment from the Fund may only be made by the Scottish Ministers to a relevant person where—

- (a) the relevant person has made a written application to the Scottish Ministers for payment, and
- (b) the Scottish Ministers have approved that application for payment.

(3) Without prejudice to the Scottish Ministers' ability to approve or reject an application for payment from the Fund, the Scottish Ministers may reject an application for payment from the Fund where the Scottish Ministers consider that there are insufficient monies in the Fund.

(4) Subject to paragraph (5), payments made from the Fund in accordance with paragraph (2) may be made subject to such conditions as the Scottish Ministers consider appropriate.

(5) All payments made from the Fund in accordance with paragraph (2) must be made subject to conditions which require—

- (a) the payment to be used for a purpose or purposes specified by the Scottish Ministers, and
- (b) the recipient of the payment to repay the monies to the Scottish Ministers, on the Scottish Ministers' demand, if a condition attaching to the payment is not complied with.

(6) For the purposes of paragraph (2), a written application includes an application submitted to the Scottish Ministers electronically.

(7) In this regulation, "relevant person" means a person who provides or secures the provision of support services for persons who are or appear to be victims of crime.

Record-keeping

7.—(1) The Scottish Ministers must keep records of—

- (a) every payment made into the Fund,
- (b) every payment made out of the Fund,
- (c) the recipients of payments made out of the Fund,
- (d) the outlays incurred in administering the Fund which have been paid to the Scottish Ministers under section 253G(4)(d) of the 1995 Act, and
- (e) the balance of the Fund.

(2) Records kept by the Scottish Ministers under paragraph (1) may be disposed of by or on behalf of the Scottish Ministers after 6 years.

Duty to prepare and publish reports

8.—(1) The Scottish Ministers must prepare and publish a report on the administration of the Fund no later than—

- (a) 31 July 2021, and
- (b) 31 July in each subsequent year.

(2) The report prepared and published under paragraph (1) must include the information contained in records kept in accordance with regulation 7 for the following periods—

- (a) in relation to the report published under paragraph (1)(a), the period beginning with the first payment made from the Fund and ending on 31 March 2021, and
- (b) in relation to reports published under paragraph (1)(b), the period of 12 months prior to 31 March each year.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE

Table

<i>Amount of fine (Column 1)</i>	<i>Surcharge payable (Column 2)</i>
Up to and including £200	£10.00
Between £200.01 and £500 inclusive	£20.00
Between £500.01 and £1,000 inclusive	£40.00
Between £1,000.01 and £2,500 inclusive	£75.00
Between £2,500.01 and £5,000 inclusive	£175.00
Between £5,000.01 and the prescribed sum (as defined by section 225(8) of the 1995 Act) inclusive	£350.00
In excess of the prescribed sum (as so defined)	7.5% of the fine

EXPLANATORY NOTE*(This note is not part of the Regulations)*

These Regulations make provision for the operation of the victim surcharge (“the surcharge”) and the administration of the Victim Surcharge Fund (“the Fund”).

Regulation 3 provides that the surcharge applies only to fines.

Regulation 4 introduces the schedule of the Regulations which denotes the amount of surcharge applicable to the requisite level of fine. Regulation 4(2) provides that where more than one fine is received by an offender in the same proceedings the applicable surcharge is calculated according to the aggregate amount of the fines imposed.

Regulation 5 makes general provision about the administration of the Fund by the Scottish Ministers. Under regulation 5(2), the Scottish Ministers are obliged to prepare and publish a guidance document about the operation of the Fund. The first such guidance must be published by 25 May 2020 and must be laid before the Scottish Parliament. The guidance may be revised by the Scottish Ministers from time to time and the revised guidance must also be laid before the Scottish Parliament. In addition, the Scottish Ministers must have regard to the need to promote equality and diversity and prevent discrimination, harassment and victimisation in the administration of the Fund.

Regulation 6 makes provision for the payment of monies from the Fund. No payments may be made out of the Fund during the first six months of its operation – payments can commence from 25 May 2020 onwards. Payments can only be made following the receipt of a written or electronic application from the prospective recipient of the payment and the approval of that application by the Scottish Ministers. The Scottish Ministers may reject an application if they consider that there are insufficient monies in the Fund although this is without prejudice to the Scottish Ministers general discretion to determine applications. Payments from the Fund may be made subject to conditions but there are two mandatory conditions which must be attached to every such payment from the Fund: (1) that the payment must be used for a specified purpose; and (2) the payment must be repaid on demand if any condition is not complied with.

Regulation 7 provides details of the matters which must be recorded by the Scottish Ministers and for how long those records must be kept.

Regulation 8 places an obligation on the Scottish Ministers to prepare and publish an annual report on the administration of the Fund. Each report must document the information recorded by the Scottish Ministers under regulation 7. The first report covers the period from first payment until 31 March 2021 and subsequent reports cover the 12 months preceding 31 March in each subsequent year.