



# Victims and Witnesses (Scotland) Act 2014 2014 asp 1

## *Sentencing*

### **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.

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*Status: Point in time view as at 10/02/2021.*

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- (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

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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).”.

#### **Commencement Information**

**I1** S. 25 in force at 25.8.2020 for specified purposes by [S.S.I. 2020/237, art. 2](#)

**I2** S. 25 in force at 10.2.2021 in so far as not already in force by [S.S.I. 2020/405, art. 2\(b\)](#) (with art. 3)

**Status:**

Point in time view as at 10/02/2021.

**Changes to legislation:**

There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014, Section 25.