



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

## *Sentencing*

### **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.

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*Status: This is the original version (as it was originally enacted).*

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- (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).”.