

Draft Order laid before the Scottish Parliament under section 33(3) of the Victims and Witnesses (Scotland) Act 2014 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

CRIMINAL PROCEDURE

The Victims and Witnesses (Scotland) Act
2014 (Supplementary Provisions) Order 2021

Made - - - - 2021

Coming into force in accordance with article 1(2)

The Scottish Ministers make the following Order in exercise of the power conferred by section 33 of the Victims and Witnesses (Scotland) Act 2014⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 33(3) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021.

(2) This Order comes into force on the day after the day on which it is made.

Amendment of the Criminal Procedure (Scotland) Act 1995

2.—(1) The Criminal Procedure (Scotland) Act 1995⁽²⁾ is amended as follows.

(2) In section 227H(5) (compensation requirement)⁽³⁾—

(a) the “and” immediately following paragraph (c) is repealed,

(b) after paragraph (d) insert—

“(e) section 253C,

(f) section 253D, and

(g) section 253H.”.

⁽¹⁾ 2014 asp 1.

⁽²⁾ 1995 c.46.

⁽³⁾ Section 227H was inserted by section 14(1) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(3) In section 253A (restitution order where conviction of police assault etc.)(4), after subsection (5) insert—

“(6) A restitution order is to be treated as a sentence for the purposes of any appeal under this Act.”.

(4) In section 253E(2) (enforcement: application of certain provisions relating to fines)(5), before paragraph (a) insert—

“(za) section 121(4),

(zb) section 193(3).”.

(5) In section 253F(1)(b) (victim surcharge)(6) after “order” insert “in respect of the same offence or a different offence in the same proceedings”.

(6) In section 253J(2) (enforcement: application of certain provisions relating to fines)(7), before paragraph (a) insert—

“(za) section 121(4),

(zb) section 193(3).”.

(7) In section 307(1) (interpretation)(8), in the definition of “fine”—

(a) the “or” immediately following paragraph (b) is repealed,

(b) after paragraph (c) insert—

“or

(d) a restitution order;”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(4) Section 253A was inserted by section 25 of the Victims and Witnesses (Scotland) Act 2014 (asp 1).

(5) Section 253E was inserted by section 25 of the Victims and Witnesses (Scotland) Act 2014 (asp 1).

(6) Section 253F was inserted by section 26 of the Victims and Witnesses (Scotland) Act 2014 (asp 1).

(7) Section 253J was inserted by section 26 of the Victims and Witnesses (Scotland) Act 2014 (asp 1).

(8) The definition of “fine” in section 307(1) was amended by S.S.I. 2019/388.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes supplementary provision for the purposes of, and for giving full effect to, sections 25 and 26 of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”). Section 25 of the 2014 Act adds sections 253A to 253E to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which provide for the introduction of restitution orders. Section 26 of the 2014 Act adds sections 253F to 253J to the 1995 Act which provide for the introduction of the victim surcharge.

Article 2(2) of this Order amends section 227H of the 1995 Act to provide that sections 253C, 253D and 253H apply to a compensation requirement imposed as part of a community payback order in the same way as those sections apply to a compensation order. Applying section 253C to compensation requirements provides that the court, in imposing a restitution order alongside any combination of a fine, a compensation order and a compensation requirement, should prefer a compensation order or compensation requirement, then a restitution order over a fine. Applying section 253D to compensation requirements provides that a payment received from an individual who is subject to a restitution order alongside any combination of a fine, a compensation order and/or a compensation requirement should be applied firstly in satisfaction of the compensation order or requirement, then the restitution order and then the fine. Applying section 253H to compensation requirements provides that a payment received from an individual who is subject to a victim surcharge alongside any combination of a fine, a compensation order and/or a compensation requirement should be applied firstly in satisfaction of the compensation order or requirement, then the victim surcharge and then the fine.

Article 2(3) of this Order amends section 253A of the 1995 Act to provide that a restitution order is a fine for the purposes of an appeal. Without this provision a restitution order imposed on a person could only be appealed if the person appealed the underlying conviction, an appeal against sentence only would not otherwise be possible. This supplementary provision is designed to ensure that where a court convicts a person of police assault and imposes a restitution order, the person can appeal against the imposition or extent of the restitution order.

Section 253E(1) of the 1995 Act provides that the list of provisions in section 253E(2) apply to restitution orders in the same manner as they apply to fines. Article 2(4) of this Order adds sections 121(4) and 193(3) of the 1995 Act to the list in section 253E(2). Section 121(4) of the 1995 Act provides that a fine imposed in solemn proceedings cannot be enforced until the period for lodging an appeal has passed or an appeal has been determined. Section 193(3) provides that a fine imposed in summary proceedings cannot be enforced pending determination of any appeal. Article 2(4) ensures that those provisions will apply to restitution orders as they apply to fines.

Article 2(5) of this Order clarifies that a court cannot impose a victim surcharge where the court makes a restitution order in relation to the same offence or a different offence in the same proceedings.

Section 253J(1) of the 1995 Act provides that the list of provisions in section 253J(2) apply to victim surcharges in the same manner as they apply to fines. Article 2(6) of this Order adds sections 121(4) and 193(3) of the 1995 Act to the list in section 253J(2) thereby ensuring that those provisions will apply to victim surcharges as they apply to fines.

Article 2(7) of this Order amends the definition of “fine” in section 307 of the 1995 Act in order to expressly exclude a restitution order from that definition. Section 253E of the 1995 Act (as inserted by section 25 of the 2014 Act) applies certain of the fine enforcement provisions of the 1995 Act to restitution orders as they apply in relation to fines but with certain modifications. Section 253E

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 No. 57*

therefore implies that a restitution order is not a fine. This Order makes that position express in section 307 of the 1995 Act.