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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 281 (C. 10)**

**PROCEEDS OF CRIME**

**The Serious Crime Act 2015 (Commencement  
No. 2) (Scotland) Regulations 2019**

*Made* - - - - *10th September 2019*  
*Laid before the Scottish*  
*Parliament* - - - - *12th September 2019*  
*Coming into force* - - *25th November 2019*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 88(2) of the Serious Crime Act 2015(1) and all other powers enabling them to do so.

In accordance with section 88(2) of that Act, the Scottish Ministers have consulted with the Secretary of State.

**Citation and commencement**

1. These Regulations may be cited as the Serious Crime Act 2015 (Commencement No. 2) (Scotland) Regulations 2019 and come into force on 25 November 2019.

**Appointed day**

2.—(1) 25 November 2019 is the appointed day for the coming into force, in accordance with paragraph (2), of the following provisions of the Serious Crime Act 2015—

- (a) section 15 (restitution order and victim surcharge),
- (b) section 85(1) (minor and consequential amendments), so far as not already in force and so far as it relates to the provisions mentioned in paragraph (c) of this regulation, and
- (c) paragraphs 36 to 41 and 44 of schedule 4 (minor and consequential amendments).

(2) The provisions listed in paragraph (1) are brought into force only in so far as they relate to the victim surcharge and not in so far as they relate to restitution orders.

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St Andrew's House,  
Edinburgh  
10th September 2019

*HUMZA YOUSAF*  
A member of the Scottish Government

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## EXPLANATORY NOTE

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

These Regulations are the second commencement regulations made by the Scottish Ministers under section 88(2) of the Serious Crime Act 2015 (“the Act”).

Regulation 2 sets 25 November 2019 as the appointed day for bringing section 15 (restitution order and victim surcharge) and paragraphs 36 to 41 and 44 of schedule 4 (minor and consequential provisions) of the Act partially into force. Regulation 2 also brings section 85(1) of the Act partially into force on the appointed day but only in so far as it relates to those paragraphs of schedule 4.

All of these provisions are brought into force in respect of the victim surcharge but not restitution orders as the relevant provisions of the Victims and Witnesses (Scotland) Act 2014 in relation to restitution orders have not yet been brought into force.

There are no transitional provisions for the commencement of these provisions of the Act as they will only take effect where a court imposes a victim surcharge. The victim surcharge is being introduced only for offences taking place after the appointed day in these Regulations.

Section 15 adds section 97A to the Proceeds of Crime Act 2002 (“the 2002 Act”), making provision for the situation where a court imposes a relevant order alongside a confiscation order. The new section 97A of the 2002 Act operates to ensure that the relevant order is given priority over the confiscation order when monies are collected from the offender. “Relevant order” is defined as either a victim surcharge imposed under section 253F of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) or a restitution order imposed under section 253A of the 1995 Act. Confiscation orders are imposed under section 92 of the 2002 Act.

Paragraphs 36 to 41 and 44 of schedule 4 of the Act make minor and consequential amendments to the 2002 Act so as to ensure that a victim surcharge or a restitution order would be treated in a similar manner to a compensation order when a court imposes a confiscation order on an offender under section 92 of the 2002 Act. Compensation orders are imposed under section 249 of the 1995 Act.

The Bill for the Act received Royal Assent on 3 March 2015. The following provisions of the Act came into force on that day: sections 80, 81 (and the corresponding consequential provisions in paragraph 74 of schedule 4 and section 85(1) so far as relating to that paragraph), 82, 83, 85(2) to (7) and 86 to 89.

## NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

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

Certain provisions of the Act have been brought into force by commencement regulations made before the date of these Regulations ([S.R. 2015/190](#), [S.I. 2015/820](#), [S.I. 2015/1428](#), [S.I. 2015/1809](#), [S.I. 2015/1976](#), [S.I. 2016/148](#), [S.S.I. 2016/11](#), [S.I. 2017/451](#) and [S.I. 2017/511](#)). Those regulations commence provisions of the Act which relate to other parts of the United Kingdom as well as Scotland.

The only provisions of the Act which fall to the Scottish Ministers to commence are sections 15 to 22 and 38(3), as well as paragraphs 16 and 35 to 45 of schedule 4 (and section 85(1) so far as relating to those paragraphs), (see section 88(2) of the Act). Sections 16 to 22 and 38(3) together with paragraphs 16, 35, 42, 43 and 45 of schedule 4 (and section 85(1) so far as relating to those paragraphs) were brought into force by the Scottish Ministers on 1 March 2016 (via [S.S.I. 2016/11](#)).

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The provisions of the Act that have been brought into force, and which extend to Scotland, are listed below.

| <i>Provision</i>   | <i>Date of Commencement</i> | <i>S.I./S.S.I. No.</i>         |
|--|-----------------------------|--------------------------------|
| Sections 16 to 22  | 1 March 2016                | <a href="#">S.S.I. 2016/11</a> |
| Section 23   | 1 March 2016                | <a href="#">S.I. 2016/148</a>  |
| Section 37   | 1 June 2015                 | <a href="#">S.I. 2015/820</a>  |
| Section 38(1)  | 1 March 2016                | <a href="#">S.I. 2016/148</a>  |
| Section 38(3)  | 1 March 2016                | <a href="#">S.S.I. 2016/11</a> |
| Section 39   | 1 June 2015                 | <a href="#">S.I. 2015/820</a>  |
| Sections 41 to 44  | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| Section 46   | 1 March 2016                | <a href="#">S.I. 2016/148</a>  |
| Sections 47 to 49  | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| Section 50(1)(a) and (c) and (2)   | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| Section 50(1)(b)   | 1 March 2016                | <a href="#">S.I. 2016/148</a>  |
| Sections 52 to 65  | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| Section 84   | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| Section 85(1) so far as relating to paragraphs 1, 7 to 12, 18, 66(1) and (3), 73(1) and (5), 75 and 76 to 80 of schedule 4 | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| Section 85(1) so far as relating to paragraphs 6, 52 to 54, 56, 57 and 59 of schedule 4                                    | 1 June 2015                 | <a href="#">S.I. 2015/820</a>  |
| Section 85(1), so far as relating to paragraphs 16, 35, 42, 43 and 45 of schedule 4  | 1 March 2016                | <a href="#">S.S.I. 2016/11</a> |
| Section 85(1) so far as relating to paragraphs 14, 15, 55, 71 and 73 of schedule 4   | 1 March 2016                | <a href="#">S.I. 2016/148</a>  |
| Schedule 1   | 1 March 2016                | <a href="#">S.I. 2016/148</a>  |
| Schedule 2   | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| Schedule 4: paragraph 1  | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| paragraph 6  | 1 June 2015                 | <a href="#">S.I. 2015/820</a>  |
| paragraphs 7 to 12 and 18  | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |
| paragraphs 14, 15, 55, 71 and 73   | 1 March 2016                | <a href="#">S.I. 2016/148</a>  |
| paragraphs 16, 35, 42, 43 and 45   | 1 March 2016                | <a href="#">S.S.I. 2016/11</a> |
| paragraphs 52 to 54, 56, 57 and 59   | 1 June 2015                 | <a href="#">S.I. 2015/820</a>  |
| paragraphs 66(1) and (3), 73(1) and (5), 75 and 76 to 80   | 3 May 2015                  | <a href="#">S.I. 2015/820</a>  |

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