

# **Business and Regulatory Impact Assessment**

## Final Business and Regulatory Impact Assessment

### **Title of Proposal**

The Victim Surcharge / Victim Surcharge Fund

### **Purpose and intended effect**

#### **Background**

This BRIA relates to a suite of 6 Scottish Statutory Instruments (SSIs) which are due to come into force on 25<sup>th</sup> November 2019 to establish the victim surcharge and related provisions:

**The Victim Surcharge (Scotland) Regulations 2019** - To make provisions for the operation of the victim surcharge and the administration of the victim surcharge fund (VSF).

**The Victim Surcharge Fund (Prescribed Relatives) (Scotland) Regulations 2019** - To define those relatives of victims to which certain provisions of the 1995 Act apply. The practical effect of this definition is to enable Victim Support Organisations (VSOs) to use the VSF to support relatives of victims of crime (for example the parent of a child victim).

**The Victims And Witnesses (Scotland) Act 2014 (Commencement No.5) Order 2019** – To partly commence section 26 of the 2014 Act, which inserts section 253F to 253J into the 1995 Act. These sections provide for the introduction of victim surcharge and the VSF. The only part of section 26 not being commenced is the new section 253G(4)(a) and (b) of the 1995 Act which would enable payments to be made out of the VSF directly to victims of crime and the prescribed relatives of victims respectively.

**The Enforcement of Fines (Relevant Penalty) (Scotland) Order 2019** – To specify the victim surcharge as a relevant penalty for the purposes of section 226l of the 1995 Act to ensure it can be enforced in the event of non-payment by the offender. This order also specifies the relevant court to enable enforcement of the surcharge.

**The Serious Crime Act 2015 (Commencement No. 2) (Scotland) Regulations 2019** – To commence the parts of the 2015 Act which ensure that the court can give payment of the victim surcharge priority over a confiscation order.

**The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2019** To substitute a new definition of fine into section 307 of the 1995 Act to clarify that the victim surcharge is not a fine.

## **Policy Overview**

The Victims and Witnesses (Scotland) Act 2014 ('the 2014 Act') introduced various measures to improve the support and information available to victims and witnesses of crime. This included provisions to introduce a victim surcharge to be imposed on a person who is convicted of an offence and receives a certain prescribed sentence.

The surcharge will be collected by the Scottish Courts and Tribunals Service (SCTS), in the same way they already collect fines and compensation orders, and transferred to the VSF, which will be held and operated by the Scottish Government. The purpose of the VSF (as set out in section 253G(3) of the 1995 Act) is to 'secure the provision of support services for persons who are or appear to be the victims of crime and prescribed relatives of such persons'.

Once the surcharge has been operational for a prescribed period of time, victim support organisations (VSOs), such as Victim Support Scotland, will be invited to apply for a share of the VSF. In turn, VSOs will be able to use this funding to provide practical support to victims and their relatives in the aftermath of crime. It is envisaged that such support will include paying for items such as: funeral costs; new furniture; new doors and locks; and alarms.

A victim surcharge was first introduced in England and Wales in April 2007 (under section 161A of the Criminal Justice Act 2003). In Northern Ireland, the "offender levy" is equivalent to the victim surcharge, and this was introduced in 2011.

## **Objective**

The overarching objective of the policy is to impose an additional charge on offenders which will be collected and used to fund support services for victims of crime and prescribed relatives.

## **Rationale for Government intervention**

The Scottish Government is committed to putting victims rights at the centre of the justice system and to improving support and advice that is available to them.

The surcharge will enable additional funding to be available to provide practical support to victims and their relatives.

This funding will be in addition to existing SG funding to support victims, including to third sector organisations who provide practical and emotional support to victims (£18 million is being provided in 2019/20).

This supports the SG National Outcomes - We live our lives safe from crime, disorder and danger; and we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

## **Consultation**

### **Public Consultation**

A public consultation paper, 'Making Justice Work for Victims and Witnesses'<sup>1</sup> was published in July 2012 prior to the introduction of the Victims and Witnesses Bill, which led to the 2014 Act. This included consultation on the introduction of a victim surcharge, responses to which helped to shape its design. For example, the majority of respondents to the consultation agreed to: the principle of introducing a victim surcharge; the surcharge being applied to a court fine in the first instance; and the amount payable being proportionate to the value of the fine imposed, rather than a flat rate. Non-confidential responses to the consultation<sup>2</sup> and an analysis<sup>3</sup> are available on the Scottish Government website.

Consultation with VSOs, including Victim Support Scotland, Scottish Women's Aid and Rape Crisis Scotland and the justice organisations affected by the legislation was undertaken throughout the development of the Bill.

This engagement with VSOs has continued in preparing these SSIs to help design the way the surcharge will be imposed, collected, enforced, applied for, allocated, monitored and reported. This engagement has included meetings with the Victims Organisations Collaboration Forum Scotland (VOCFS) at which the plans for introducing the VSF were discussed. In addition, we are seeking input on draft guidance and the associated application process from VSOs. The aim is to ensure the administrative arrangements for the VSF are efficient and robust, and that victims of crime are able to access appropriate help from the VSF when needed. The final guidance will be published within 6 months of the SSIs coming into force.

### **Business**

We consider that this policy will not create additional financial, administrative or regulatory requirements on business. We have therefore not engaged with businesses.

As set out above, we have engaged with public sector and third sector bodies to help us develop this policy.

VSOs told us that, should they be successful in applying for a share of the VSF, there will likely be a financial or administrative impact on them from distributing, monitoring and reporting on the VSF.

Our intention is that VSOs will be able to use a small percentage of the funds they are awarded to administer their application for and use of the VSF. This can be covered by payment from the VSF under section 253G(4)(c). We will continue to engage with VSOs on the VSF and will finalise the maximum percentage that can be used for administration in final guidance.

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<sup>1</sup> <http://www.gov.scot/Publications/2012/05/8645/0>

<sup>2</sup> <http://www.gov.scot/Publications/2012/09/3650/0>

<sup>3</sup> <http://www.gov.scot/Publications/2013/01/8185/0>

## **Options**

(Option 1) Do nothing

(Option 2) Take forward the suit of SSIs outlined above in order to establish the victim surcharge and the VSF.

## **Sectors and groups affected**

- Offenders – if convicted and sentenced to a court fine, they will be required to pay the surcharge
- Victims of crime (and their prescribed relatives) – who will be able to access practical support from the VSF
- SCTS – who will collect the surcharge, in the same way they already collect fines and compensation orders, and transfer it the VSF
- Scottish Government – who will hold and operate the VSF
- VSOs – who will be able to apply for a share of the VSF and, In turn, use this funding to provide practical support to victims and their relatives in the aftermath of crime.

## **Benefits**

(Option 1) This represents the “no change” option and thus has no benefits to offer over the current arrangements. Any perceived benefit in terms of reduced burdens over option 2 would be overshadowed by the failure to implement the victim surcharge and the VSF, resulting in no benefit to victims of crime.

(Option 2) Under this option:

- offenders will be more accountable for the harm or damage that their actions cause to victims of crime;
- victims of crime will benefit from having access to support from the VSF;
- Scottish Government will have additional funding available to help support victims of crime which supports the SG’s stated commitment to improve the experience of victims of crime<sup>4</sup>;
- VSOs will have additional funding to enable them to provide practical support to victims of crime.

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<sup>4</sup> <https://www.gov.scot/publications/protecting-scotlands-future-governments-programme-scotland-2019-20/>

## **Costs**

(Option 1) There would be no cost to Scottish Government, SCTS and VSOs as the victim surcharge would not be implemented and the VSF would not be established.

(Option 2) Costs for this option fall on:

### **VSOs**

- VSOs told us that, should they be successful in applying for a share of the VSF, there will likely be a financial or administrative impact on them from distributing, monitoring and reporting on the VSF.
- Our intention is that VSOs will be able to use a small percentage of the funds they are awarded to administer their application for and use of the VSF. This can be covered by payment from the VSF under section 253G(4)(c). We will continue to engage with VSOs on the VSF and will finalise the maximum percentage that can be used for administration in final guidance.

### **SCTS**

- The estimated cost to SCTS was set out in the financial memorandum to the Victims and Witnesses Bill<sup>5</sup> and updated in August 2019.
- Non-recurring costs - SCTS estimated the IT costs involved in setting up the victim surcharge at £22,000.
- In addition, SCTS have estimated a recurring annual cost of £135k made up of court running time (£115k) and reconciliation and banking etc. (£20k).

### **Scottish Government**

- There would be a cost associated with fulfilling the role of operator of the VSF. Specifically, this would require staff time to account for funds received from SCTS, processing of applications from VSOs for payment from the VSF, record keeping, oversight and reporting.
- Recurring costs - We estimate this cost will be approximately £26,000 per annum and will be recouped from the VSF as an outlay occurred in administration in terms of section 253G(4)(d) of the 1995 Act.

### **Total Estimated Costs**

There is an estimated total recurring cost of £161,000 per annum (£135,000 on SCTS and £26,000 on SG) and an estimated one-off cost of £22,000 on SCTS.

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<sup>5</sup> [http://www.parliament.scot/S4\\_Bills/Victims%20and%20Witnesses%20\(Scotland\)%20Bill/b23s4-introd-en.pdf](http://www.parliament.scot/S4_Bills/Victims%20and%20Witnesses%20(Scotland)%20Bill/b23s4-introd-en.pdf)

### **Scottish Firms Impact Test**

The Scottish Government felt that it would be disproportionate to carry out individual business interviews as the proposals have no regulatory or negative financial impact on the private sector.

### **Competition Assessment**

Using the Competition & Markets Authority Competition Filter questions we have concluded that this policy will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete, or reduce suppliers' incentives to compete vigorously as the proposals will have no regulatory effect on business.

### **Consumer Assessment**

We have concluded that this policy will have no impact on consumers.

### **Test run of business forms**

The Scottish Government will invite applications for a share of the VSF from VSOs who provide or secure the provision of support services for persons who are or appear to be victims of crime. To support this process an application form and guidance notes will be developed, with feedback sought from VSOs as part of the development process.

### **Digital Impact Test**

We have concluded that this policy will have no digital impact.

### **Legal Aid Impact Test**

The SG Access to Justice team is aware of these proposals and are content.

Scottish Legal Aid Board has been consulted and is content these proposals will have no impact on the Legal Aid Fund. Where an accused appears in court for non-payment of a financial penalty and is represented, then there may be a legal aid cost. However as surcharge enforcement will sit alongside enforcement of the substantive fine there will be no additional cost to the Legal Aid Fund.

### **Enforcement, sanctions and monitoring**

Scottish Government will receive information on the victim surcharge from SCTS within the existing disposals data flow and from SCTS's Criminal History System. Information will also be included in the Quarterly Fines Report.

The Scottish Government will also prepare and publish a report on the administration of the VSF no later than 31st July in the year 2021 and 31st July in each year thereafter.

### **Implementation and delivery plan**

The proposals will be implemented through the suite of SSIs, which are anticipated to come into force on 25<sup>th</sup> November 2019.

No payment will be made out of the VSF until at least 6 months after the SSIs come into force.

The Scottish Government will prepare and publish guidance about the operation of the VSF by 25th May 2020 and lay it before the Scottish Parliament as soon as reasonably practicable thereafter.

The Scottish Government will also prepare and publish a report on the administration of the VSF no later than 31st July in the year 2021 and 31st July in each year thereafter.

### **Post-implementation review**

The implementation of this policy will be reviewed on an annual basis, as part of the requirement for the Scottish Government to prepare and publish a report on the administration of the VSF.

### **Summary and recommendation**

**Option (2) is recommended.** This will enable the victim surcharge and VSF to be implemented. This option brings benefits to:

- offenders will be more accountable for the harm or damage that their actions cause to victims of crime;
- victims of crime will benefit from having access to support from the VSF;
- Scottish Government will have additional funding available to help support victims of crime;
- VSOs will have additional funding to enable them to provide practical support to victims of crime.

Option 2 does come with a financial impact on SCTS and SG - estimated as a total recurring cost of £161,000 per annum (£135,000 on SCTS and £26,000 on SG) and an estimated one-off cost of £22,000 on SCTS.

There will also likely be a financial or administrative impact on VSOs from distributing, monitoring and reporting on the VSF. This can be covered by payment from the VSF.

## Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	There are no benefits associated with Option 1.	<p>Social and Policy – victims of crime will not receive additional support in line with the policy objectives of the VSF.</p> <p>Administrative – there will be no administrative burdens on the Scottish Government, SCTS or the third sector.</p>
2	<p>Social – offenders who are fined by the court will pay a victim surcharge and be more accountable for their actions by contributing to on-going victim support. Victims of crime will receive additional support in line with the policy objectives of the VSF.</p> <p>Administrative - there will be administrative burdens on the Scottish Government, SCTS and the third sector, however these are considered to be proportionate in line with the aims of the policy.</p>	<p>Scottish Government – administrative costs of £26,000 per annum.</p> <p>SCTS – estimated IT set up costs of £22,000 and on-going running costs of £135,000 per annum.</p> <p>There would be a cost to any victim support organisations who apply to the VSF in administering and accounting for payments made to them by the Scottish Government as operator of the VSF.</p> <p>Administrative expenses incurred (or to be incurred) by a victim support organisation can be met by a payment from the VSF under section</p>



		<p>253G(4)(c).</p> <p>We will continue to engage with VSOs on the VSF and will finalise the maximum percentage that can be used for administration in guidance, to be published by 25th May 2020.</p>
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**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:****Humza Yousaf****Date:****4 September 2019****Minister's name: Humza Yousaf MSP****Minister's title: Cabinet Secretary for Justice**