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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2021 No.**

**CRIMINAL LAW**

**The Restitution Fund (Scotland) Order 2021**

*Made* - - - - 2021

*Coming into force* - - 10th February 2021

The Scottish Ministers make the following Order in exercise of the powers conferred by section 253B(5) and (6) of the Criminal Procedure (Scotland) Act 1995(a) and all other powers enabling them to do so.

In accordance with section 253B(7) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Restitution Fund (Scotland) Order 2021 and comes into force on 10 February 2021.

**Interpretation**

2. In this Order—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995,

“the Fund” means the Restitution Fund established, maintained and administered under section 253B(3) of the 1995 Act and this Order,

“the operator” means the Scottish Police Benevolent Fund, a Scottish charitable incorporated organisation with registered number SC043489,

“relevant person” means a person who provides or secures the provision of support services for victims.

**The delegation of the establishment, maintenance and administration of the Restitution Fund**

3. The Scottish Ministers delegate the establishment, maintenance and administration of the Fund to the operator.

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(a) 1995 c.46. Section 253B was inserted by the Victims and Witnesses (Scotland) Act 2014 (asp 1), section 25.

### **The administration of the Restitution Fund**

- 4.—(1) The Fund must be administered by the operator in accordance with articles 4 to 7.
- (2) Subject to paragraphs (3) and (4), the Scottish Ministers must prepare and publish guidance about the operation of the Fund.
- (3) The first guidance prepared and published under paragraph (2) must be—
- (a) published by the date falling six months after this Order comes into force, and
  - (b) laid before the Scottish Parliament as soon as reasonably practicable thereafter.
- (4) The guidance prepared and published by the Scottish Ministers under paragraph (2) may be revised by the Scottish Ministers from time to time.
- (5) In the establishment, maintenance and administration of the Fund, the operator must have regard to—
- (a) the need to promote equality and diversity,
  - (b) the need to prevent discrimination, harassment and victimisation on grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation, and
  - (c) the guidance prepared and published by the Scottish Ministers under paragraph (2).

### **Making payments out of the Fund**

- 5.—(1) No payments may be made from the Fund by the operator prior to the date falling six months after this Order comes into force.
- (2) A payment from the Fund may only be made by the operator to a relevant person where—
- (a) the relevant person has made a written application to the operator for payment, and
  - (b) the operator has approved that application for payment.
- (3) Without prejudice to the operator's ability to approve or reject applications for payment from the Fund, the operator may reject an application for payment from the Fund where the operator considers that there are insufficient monies in the Fund.
- (4) Subject to paragraph (5), payments made from the Fund in accordance with paragraph (2) may be made subject to such conditions as the operator considers appropriate.
- (5) All payments made from the Fund in accordance with paragraph (2) must be made subject to conditions which require—
- (a) the payment to be used for a specified purpose or purposes, and
  - (b) the recipient of the payment to repay the monies (or a portion of the monies) to the operator, in accordance with the operator's requirements, if a condition attaching to the payment is not complied with.
- (6) For the purposes of paragraph (2), a written application includes an application submitted to the operator electronically.

### **Record-keeping**

- 6.—(1) The operator must keep records of—
- (a) every payment made into the Fund,
  - (b) every payment made out of the Fund,
  - (c) the recipients of payments made out of the Fund,
  - (d) the outlays incurred in administering the Fund which have been retained by the operator under section 253B(4)(b) of the 1995 Act, and
  - (e) the balance of the Fund.
- (2) Records kept by the operator under paragraph (1) may be disposed of by or on behalf of the operator after six years.

### **Duty to prepare and publish reports**

7.—(1) The operator must prepare a report on the administration of the Fund, and send a copy of that report to the Scottish Ministers, no later than—

- (a) 31 July 2022, and
- (b) 31 July in each year thereafter.

(2) The operator must publish the report prepared under paragraph (1) no earlier than two weeks after it has been sent to the Scottish Ministers.

(3) The report prepared under paragraph (1) must include the information contained in records kept in accordance with article 6 for the following periods—

- (a) in relation to the report prepared under paragraph (1)(a), the period beginning with the first payment made into the Fund and ending on 31 March 2022, and
- (b) in relation to reports prepared under paragraph (1)(b), the period of twelve months prior to 31 March each year.

(4) For the purposes of this article, the publication of the report includes making the report available to the public on a website or by other electronic means.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## EXPLANATORY NOTE

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

Where a restitution order is imposed on an individual under section 253A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), all monies received by the court in payment of the order are to be paid to the Scottish Ministers under section 253B(1). The Scottish Ministers are then obliged under section 253B(2) to pay all monies so received into a fund to be known as the Restitution Fund (“the Fund”). This Order provides for the delegation of the establishment, maintenance and administration of the Fund and makes further provision for the administration of the Fund.

Article 3 of this Order delegates the establishment, maintenance and administration of the Fund to the Scottish Police Benevolent Fund (“the operator”).

Article 4 makes general provision about the administration of the Fund by the operator. Under Article 4(2), the Scottish Ministers are obliged to prepare and publish a guidance document about the operation of the Fund. The first such guidance must be published within six months of this Order coming into force and must be laid before the Scottish Parliament as soon as reasonably practicable thereafter. The operator must have regard to the need to promote equality and diversity and prevent discrimination, harassment and victimisation in the administration of the Fund and must also have regard to the guidance published by the Scottish Ministers.

Article 5 makes provision for the payment of monies from the Fund. No payments may be made out of the Fund during the first six months of its operation. Payments can only be made to a person providing or securing the provision of support services for victims (as defined in section 254B(3) of the 1995 Act) following the receipt of a written or electronic application from that person and the approval of that application by the operator. The operator may reject an application if they consider that there are insufficient monies in the Fund although this is without prejudice to the operator’s general discretion to determine applications. Payments from the Fund may be made subject to conditions but there are two mandatory conditions which must be attached to every payment from the Fund: (1) that the payment must be used for specified purposes; and (2) the payment must be repaid on demand if any condition is not complied with.

Article 6 provides details of the matters which must be recorded by the operator and for how long those records must be kept.

Article 7 places an obligation on the operator to prepare, and send to the Scottish Ministers, an annual report on the administration of the Fund. The report must then be published by the operator at least two weeks after it has been sent to the Scottish Ministers. Each report must document the information recorded by the operator under article 6. The first report covers the period from first payment into the Fund until 31 March 2022 and subsequent reports cover the twelve months preceding 31 March in each subsequent year.

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