

EQUALITY IMPACT ASSESSMENT - RESULTS

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| Title of Policy | The Victim Surcharge / Victim Surcharge Fund |
| Summary of aims and desired outcomes of Policy | <p>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.</p> <p>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 victim surcharge fund (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'.</p> <p>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.</p> |
| Directorate: Division: team | Justice Directorate: Criminal Justice Division: Victims and Witnesses Unit |

1. Executive summary

An Equality Impact Assessment (EQIA) was developed and published¹ in relation to the Victims and Witnesses (Scotland) Bill in 2013, which gave rise to this policy.

In preparing these SSIs to implement this policy, it was considered that a limited EQIA and Child Rights and Wellbeing Impact Assessment (CRWIA) was sufficient.

The provisions in the suite of SSIs set out above do not discriminate in any significant way on the basis of age, disability, sex including pregnancy and maternity, gender reassignment, sexual orientation, race or religion and belief. The rights conferred by this policy apply equally to all citizens, including children.

A potential differential impact was identified in relation to the victim surcharge on the basis of both age and sex. Those over 30 - and in particular males over 30 - are more likely to receive a fine, and therefore will be adversely effected by the having to pay the victim surcharge. However, this is a result of the offender population rather than the proposal itself, and any such minor effects are considered proportionate to the aims of the policy.

This policy offers a potential positive effect on victims of crime of any age and their prescribed relatives².

2. Background

There are a suite of 6 SSIs which are being laid 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 Enforcement of Fines (Relevant Penalty) (Scotland) Order 2019 – To specify the victim surcharge as a relevant penalty for the purposes of section 226I 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.

¹ <https://www2.gov.scot/Publications/2013/02/3668>

² As defined by the Victim Surcharge Fund (Prescribed Relatives) (Scotland) Regulations 2019

The Serious Crime Act 2015 (Commencement No. 2) (Scotland) Regulations 2019 – To commence in part, in Scotland, the following provisions of the 2015 Act: section 15 (restitution order and victim surcharge); paragraphs 36 to 41 and 44 of Schedule 4 (minor and consequential amendments); and section 85(1) (minor and consequential amendments). This ensures that the court can give payment of the victim surcharge or restitution order priority over a confiscation order where monies are collected from the offender.

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.

The 2017-18 Scottish Crime and Justice Survey estimates that one in eight (12.5%) adults aged 16 or over were victims of at least one crime. Negative issues of being a victim of crime include impacts on emotional, financial and physical health. The impact of crime can also extend to relatives of the victim particularly in regard to more serious crimes.

3. The Scope of the EQIA

The Scottish Government has examined a variety of sources in order to ascertain the impact of this policy on the protected characteristics, and on equality and children's rights matters in general.

This EQIA/CRWIA assesses the policy against the three needs of the public sector equality duty, namely to:

- eliminate discrimination, harassment and victimisation
- advance equality of opportunity; and
- foster good relations.

It does so in respect of the protected characteristics of age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race or religion and belief.

We have consulted Scottish Government Justice Analytical Services to help understand the impacts of the policy and help identify, collate, weigh up and analyse available evidence however analytical data on relatives of victims and witnesses in the criminal justice system is not recorded in any detail.

We have used evidence utilised in the development of the Victims and Witnesses (Scotland) Act 2014 and Regulations made under its provisions.

4. Consultation

A public consultation paper, 'Making Justice Work for Victims and Witnesses'³ 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

³ <http://www.gov.scot/Publications/2012/05/8645/0>

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 consultation⁴ and an analysis⁵ 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 Bill.

This engagement with VSOs has continued in preparing these instruments 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, input on the draft Guidance and application process has been sought from victims' organisations. The aim is to ensure the administrative arrangements for the fund are efficient and robust, and that victims of crime are able to access appropriate help from the fund when needed.

5. Key Findings

EQIA

We have found no significant adverse equalities impacts of this policy in respect of the protected characteristics. The provisions in the SSIs do not discriminate in any significant way on the basis of age, disability, sex including pregnancy and maternity, gender reassignment, sexual orientation, race or religion and belief.

A potential differential impact was identified in relation to the victim surcharge on the basis of both age and sex. Those over 30 - and in particular males over 30 - are more likely to receive a fine, and therefore will be adversely effected by the having to pay the victim surcharge. However, this is a result of the offender population rather than the proposal itself, and any such minor effects are considered proportionate to the aims of the policy.

We believe that none of the provisions in the legislation or the policy intent that supports it should imply any direct or indirect discrimination against any particular section of society. The main beneficiaries of the policy will be victims of crime and their relatives.

In relation to The Victim Surcharge Fund (Prescribed Relatives) (Scotland) Regulations 2019, we believe that none of the proposed definitions for prescribed relatives (which includes carers, guardians, foster carers and attorneys where appropriate) give rise to the possibility of those prescribed relatives being treated less favourably and the Regulations are mindful of other relevant equality legislation as set out in the prescribed relatives list in the Regulations at 2(1) (k) –(p).

⁴ <http://www.gov.scot/Publications/2012/09/3650/0>

⁵ <http://www.gov.scot/Publications/2013/01/8185/0>

6. Recommendations and Conclusion

The EQIA identified no significant negative impacts associated with this policy.

The Scottish Government has concluded that no changes to the policy or associated SSIs are necessary as a result of this joint EQIA/CRWIA. There appears to be no significant differential effect on the basis of the protected characteristics.

The Scottish Government will continue to work with key victim support stakeholders and organisations with an interest in offenders' rights to ensure full account is taken of equality issues and children's rights and wellbeing issues in respect of the administration and operation the victim surcharge and the VSF.