
EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulation 2 sets 10th February 2021 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 into force insofar as they are not already in force. Regulation 2 also brings section 85(1) of the Act into force on the appointed day but only insofar as it relates to those paragraphs of schedule 4.

All of these provisions were previously brought into force by the Serious Crime Act 2015 (Commencement No. 2) (Scotland) Regulations 2019 but only in respect of the victim surcharge not restitution orders. This was because section 25 (restitution orders) of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”) was not then being brought into force. As section 25 of the 2014 Act is now being brought into force the provisions listed in regulation 2(1) can be brought fully 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 restitution order. Restitution orders are being introduced only for offences taking place after the appointed day in these Regulations.

Section 15 of the Act 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.