

EXPLANATORY MEMORANDUM TO
THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (CONSEQUENTIAL
MODIFICATION) ORDER 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order makes provision in consequence of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”). It follows provisions for the introduction of the victim surcharge in the 2014 Act, which will be a new financial penalty imposed on offenders in certain cases. The Order specifically makes provision for the deduction of sums from benefits to ensure that the victim surcharge is paid. This is done by prescribing a victim surcharge as a fine in existing UK legislation. There are already provisions to deduct from benefits to ensure payment of fines, thus this designation will be sufficient to allow existing processes to be extended to cover payment of victim surcharges. The relevant provisions of the 2014 Act are to be commenced once this Order has been passed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England, Wales and Scotland.
4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

- 5.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

“In my view the provisions of The Victims and Witnesses (Scotland) Act 2014 (Consequential Modification) Order 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The introduction of the victim surcharge will expand the range of penalties a Scottish court can impose. On a practical level, there needs to be enforcement measures to ensure that the victim surcharge is paid. One such measure is deduction of sums of money from the relevant offender’s benefit payments. As social security schemes for

making deductions from benefits are reserved to the UK Government under paragraph F1 of Schedule 5 to the Scotland Act 1998, any such amendment to the Criminal Justice Act 1991 (“the 1991 Act”) or the Fines (Deductions from Income Support) Regulations 1992 (“the 1992 Regulations”) would require to be undertaken by the UK Government.

- 6.2 Section 104 of the Scotland Act 1998 allows provision to be made which is necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament. This includes provision for the UK parliament to pass a section 104 order which can amend UK primary legislation in reserved areas.
- 6.3 The 2014 Act inserts new sections into the Criminal Procedure (Scotland) Act 1995, which introduce the victim surcharge and related provisions. An amendment to the 1991 Act is required to bring Scottish victim surcharges within the definition of a fine under section 24 of the 1991 Act. This is to be achieved by adding reference to the Scottish victim surcharge into section 24(3A) of the 1991 Act, which currently states that the English and Welsh victim surcharge is to be taken as a fine for the purposes of subsections (1) and (3) of section 24 of the 1991 Act.
- 6.4 The 1992 Regulations, made under the powers in section 24(1) of the 1991 Act, indicate that where a fine has been imposed on an offender by a court, and that offender is entitled to certain benefits, the court can apply to the Secretary of State to deduct sums from those benefits to ensure payment of the fine.
- 6.5 Therefore, by amending the 1991 Act in the way proposed, the Scottish victim surcharge will automatically become a fine covered by the 1992 regulations. The Scottish Courts and Tribunals Service (SCTS) will be able to apply to the Secretary of State for a deductions from benefits order to ensure the victim surcharge is paid.

7. Policy background

What is being done and why?

- 7.1 The 2014 Act introduces various measures to increase the support available to victims and witnesses of crime in Scotland. Included in these measures is the victim surcharge, a new financial penalty to be imposed on offenders in certain cases as will be set out in the Victim Surcharge (Scotland) Regulations 2019. The money raised from this surcharge will support a Victim Surcharge Fund, for which the purpose is to secure the provision of support services for the victims of crime. The amount of the surcharge will be determined by a sliding scale depending on the amount of the fine.
- 7.2 The 1991 Act gives the Secretary of State the power to introduce a process whereby courts can apply for a deduction from an offender’s benefits to pay for a fine or compensation order. This currently applies to the victim surcharge in England and Wales but does not extend to the new victim surcharge in Scotland. This Order therefore amends the 1991 Act to facilitate recovery of the surcharge via deduction from benefits and brings Scotland into line with powers that already exist in England and Wales.
- 7.3 Currently, once the SCTS has secured a Deduction from Benefit Order, the Department for Work and Pensions in the UK Government recover fines and compensation orders on behalf of SCTS, upon application, by direct deduction from an offender’s benefits. This Order aims to extend the current arrangements to accommodate recovery of the new surcharge as well, where appropriate.

7.4 However, whilst, by virtue of section 24(3A) of the 1991 Act, the reference to a “fine” includes the victim surcharge in England and Wales, the power to enforce financial penalties under section 24 does not currently extend to the corresponding surcharge in Scotland. This Order therefore amends section 24 as necessary to facilitate the recovery of the new victim surcharge.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Though the Order amends primary legislation, the modifications are minor and purely intend to add the victim surcharge into the 1991 Act.

10. Consultation outcome

10.1 There has been no consultation exercise specific to this Order, however a public consultation paper was published in July 2012 prior to the introduction of the Victims and Witnesses Bill in Scotland.

10.2 Consultation with victims support groups (including Victim Support Scotland, Scottish Women’s Aid, ASSIST and Rape Crisis Scotland) and the justice organisations affected by the legislation was undertaken throughout this Bill’s process.

10.3 The Scottish Government has also engaged with the SCTS and victim support organisations in preparation for the introduction of the victim surcharge in Scotland.

11. Guidance

11.1 This Order stands alone, and guidance is not necessary.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector. Research undertaken ahead of the introduction of the victim surcharge estimated a recurring annual cost of £26,000 on the Scottish Government administering the Victim Surcharge Fund. The same research estimated a recurring annual cost of £115,000 on the SCTS for collecting the surcharge. These figures were not considered significant.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is expected.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Order is consequential upon the 2014 Act. No formal monitoring or review is considered necessary.

14.2 The Order does not include a statutory review provision and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State for Scotland has made the following statement: “There is no need for review or monitoring as the Order does not regulate businesses.”

15. Contact

15.1 Eleanor Tankard at the Office of the Secretary of State for Scotland. Telephone: 0207 270 6765 or email: eleanor.tankard@scotlandoffice.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Irvine or Alison Evans (job share), Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.