

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE ACT 2003 (SURCHARGE) (AMENDMENT) ORDER
2019

2019 No. 985

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This Order is intended to increase the amount of the surcharge imposed on offenders under section 161B of the Criminal Justice Act 2003, the proceeds of which are used to fund support for victims and witnesses of crime. The Order increases the current surcharge levels in accordance with inflation for 2018/19 and expected inflation for 2019/20 and 2020/21, which is necessary to prevent a decrease in real terms of the contribution by offenders to victim and witness support. The Order also fixes an error in the Criminal Justice Act 2003 (Surcharge) Order 2012 (“the 2012 Order”), clarifying that the surcharge levels for adults will apply to offenders aged 18 at the time of the relevant offence.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This Order corrects a drafting error in the 2012 Order, and will therefore be subject to the free issue procedure. Please see paragraph 7.11 of this memorandum for further detail.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 This instrument extends to England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 161B of the Criminal Justice Act requires that a court, when dealing with a person for one or more offences, must order the person to pay a surcharge. That duty was added to the Criminal Justice Act by the Domestic Violence, Crime and Victims Act 2004. The current surcharge levels are set out in the Schedule to the 2012 Order, and vary according to the age of the offender and the sentence imposed.
- 6.2 The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 amended the 2012 Order, extending the circumstances in which the surcharge is payable to include when an immediate custodial sentence is imposed in the magistrates' court.
- 6.3 The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2016 ("the 2016 Order") further amended the 2012 Order, increasing the levels of surcharge to be imposed by replacing the Schedule to the 2012 Order with a new Schedule. The 2016 Order increased the surcharge in line with expected inflation between October 2012 and March 2018, plus a one-off 5% uplift applied annually and compounded. The Explanatory Memorandum for the 2016 Order stated that a further instrument would be laid in 2019 to update the surcharge levels by expected inflation between 2018/19 and 2020/21. This Order – the Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2019 – carries out that intention.

7. Policy background

What is being done and why?

- 7.1 The aim of the surcharge is to ensure offenders hold some responsibility towards the cost of supporting victims and witnesses of crime. Income from the Surcharge contributes to the Victim and Witness Budget ("the Budget"), which grant funds support to help victims and witnesses of crime.
- 7.2 Overall amounts for the last five years are set out in the table below:

Financial Year	Surcharge collected *	Surcharge contribution to the Victim and Witness Budget*	Overall Victim and Witness Budget*
2013/14	£19m	£19m	£57m
2014/15	£24m	£24m	£86m
2015/16	£28m	£18m**	£92m
2016/17	£31m	£26m**	£96m
2017/18	£35m	£31m**	£97m

*The amounts listed in the table have been rounded to the nearest £1m

** In these years, expected income from the Surcharge was forecast into the Budget. If revenue raised from the Surcharge surpassed the forecasted amount, the excess was put towards compensating victims of violent crime through the Criminal Injuries Compensation Scheme. From the 2019/20 financial year, all revenue raised from the Surcharge will be put towards the Budget.

- 7.3 The majority of the Budget (c.70% in 2017/18) is used to fund Police and Crime Commissioners (PCCs), who are required by grant agreements to use the funding to deliver local support services for victims of crime across England and Wales. PCCs are well placed to respond to local demands and priorities, and commission services tailored to meet local needs. For example, many PCC areas (using funding from the Budget combined with funding from other sources) have established single points of contact (SPOCs) and co-located services for victims. This is in response to the problem of victims with complex needs experiencing re-traumatisation from repeating their story to multiple support providers. The introduction of SPOCs and co-located services has coordinated the support victims receive and reduced the need to for them to re-tell their stories.
- 7.4 The remainder of the Budget is used to nationally commission support services such as: 79 Rape Support Centres across England and Wales, which support victims of sexual abuse; the Court Based Witness Service, which provides on the day support for witnesses in court; and the Homicide Service, which supports families bereaved by homicide. For the full details on the support services the MoJ grant funds, please refer to the [Victim and Witness Grant Funding webpage](#).
- 7.5 The Government is committed to ensuring victims receive help to cope and recover, and that witnesses are supported to give their best evidence in court. The cross-government Victims Strategy, published September 2018, highlights the significant impact crime has on the emotional and physical wellbeing of victims and how important it is that victims receive support. The Strategy also notes that witnesses who receive support are more likely to engage with the criminal justice system. For further detail see the [Victims Strategy](#).
- 7.6 The primary purpose of this Order is to increase the surcharge in accordance with expected inflation for the 2018/19 - 2020/21 period. To calculate the rate of increase, actual inflation for 2018/19 has been combined with expected inflation for 2019/20 and 2020/21, as forecast by the Office for Budget Responsibility. The Consumer Price Index (CPI) measure of inflation has been used, following guidance from the Office for National Statistics that it is a more reliable measure of inflation than the Retail Price Index (RPI). The surcharge paid by offenders will increase by up to a maximum of £11, depending on sentence.
- 7.7 The inflationary increase for each surcharge level has been rounded to the nearest £1, rather than the nearest £5 as was previously the case. This is because the inflationary increase is insufficient to raise the surcharge on most sentences if rounded to the nearest £5, often returning the surcharge to its original value. Rounding to the nearest £1 ensures that the inflationary increase is accurate and consistent across all sentence types.
- 7.8 The inflationary increase is necessary to ensure that there is not a reduction, in real terms, of the contribution by offenders to the cost of victim and witness support, and therefore maintains offenders' responsibility towards supporting victims and witnesses of crime.
- 7.9 The tables below provide the current and new levels of surcharge as specified in this Order.

Sentence	Current surcharge levels, as specified in the 2016 Order		
	Adults (18 +)	Youth (under 18 at time of offence)	Organisations
Conditional discharge	£20	£15	£20
Fine	10% of the fine value, min £30 max £170	£20	10% of the fine value, min £30 max £170
Community order	£85	£20	
Suspended sentence of imprisonment (6 months or less)	£115	£30	
Suspended sentence of imprisonment (over 6 months)	£140	£30	
Immediate custodial sentence (6 months or less)	£115	£30	
Immediate custodial sentence (more than 6 months – up to and including 2 years)	£140	£30	
Immediate custodial sentence (over 2 years – life)	£170	£30	
Youth rehabilitation order or referral order		£20	

Sentence	New surcharge levels, as specified in the 2019 Order		
	Adults (18 +)	Youth (under 18 at time of offence)	Organisations
Conditional discharge	£21	£16	£21
Fine	10% of fine value, min £32 max £181	£21	10% of fine value, min £32 max £181
Community order	£90	£21	
Suspended sentence of imprisonment (6 months or less)	£122	£32	
Suspended sentence of imprisonment (over 6 months)	£149	£32	
Immediate custodial sentence (6 months or less)	£122	£32	
Immediate custodial sentence (more than 6 months – up to and including 2 years)	£149	£32	
Immediate custodial sentence (over 2 years – life)	£181	£32	
Youth rehabilitation order or referral order		£21	

7.10 The surcharge will be increased with inflation in the future.

7.11 This Order will also correct a technical error in article 4 of the 2012 Order, which concerns the surcharge applied to adult offenders. While the heading to article 4 states that the provision applies to offences committed by an individual aged 18 or over, the text of article 4(1) and (2) refers to an individual aged “over 18” at the time of the offence. This Order will amend article 4 so that it reflects the policy intent, which was to apply the adult surcharge levels to offenders aged 18 or over at the time of the offence. The Order will accordingly be subject to the free issue procedure.

7.12 The surcharge is collected by the National Compliance and Enforcement Service (NCES), which is a part of HM Courts and Tribunals Service (HMCTS). Financial penalties are usually collected in instalments, and an increase to the surcharge may

lengthen the time taken for successful collection. However, the Historic Debt Project, launched by HMCTS in September 2016, has provided the NCES with the tools to ensure these lengthier collection times can be managed.

- 7.13 The Historic Debt Project highlighted the level of outstanding debt that had been accumulating over the years from unpaid fines and financial impositions, and had subsequently been written off where debtors could not be traced. The project introduced new technology, intelligence and tracing tools to the debt collection process, and as result in the year ending October 2018 HMCTS successfully collected £37m in criminal financial penalties that had previously been written off.
- 7.14 The project ended in October 2018, and the new debt collection processes from the project were incorporated into the ordinary business as usual enforcement process, ensuring that debt from old accounts that would otherwise have been written off is now being reviewed on a six-monthly cycle, which over time will improve the enforcement of older debt. For the 2019/20 financial year, it is projected that £6m in old debt that would otherwise be written off will be collected. These improvements in debt collection will help to ensure that the increased surcharge levels are enforced effectively.

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 2018.

9. Consolidation

- 9.1 At this stage we do not consider it necessary to consolidate the relevant secondary legislation.

10. Consultation outcome

- 10.1 The last public consultation regarding the surcharge was part of the [2012 Getting it Right for Victims and Witnesses consultation](#). This was ahead of a material change to the surcharge which saw it expand from a £15 flat fee imposed on offenders who received a fine, to a charge imposed on all offenders varying in correlation to the severity of the sentence imposed.
- 10.2 We do not consider that further consultation is required in relation to the changes made by this Order, as the increase to the surcharge here is simply an increase in line with expected inflation, and therefore relatively minor.

11. Guidance

- 11.1 Information and guidance about the increase to the surcharge levels will be made available to the judiciary, magistracy and HMCTS operational staff ahead of the changes coming into force. The Sentencing Council will also be notified so that their guidance can be updated.
- 11.2 Guidance on the changes will also be issued through a Ministry of Justice Circular which will be sent to other Criminal Justice System partners and stakeholders.

12. Impact

- 12.1 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector. The main bodies that will be impacted are MoJ and HMCTS.
- 12.3 This policy is expected to increase MoJ income by £3.9m from 2019/20 to 2022/23, and from then on by around £1.3m per year. This income will contribute towards the victims and witness budget.

- 12.4 The table below shows the forecast income profile of this policy:

2019/20	2020/21	2021/22	2022/23
£0.3m	£1.1m	£1.2m	£1.3m

- 12.5 MoJ and HMCTS are likely to face minor additional administrative costs in preparing for the change. We expect that these costs will be minimal and met by business as usual activities.
- 12.6 There is a small risk that an increase in the surcharge could in turn impact on government departments that are owed money by offenders but are further down the prioritisation list. Surcharge payments take precedence over fines and some other deductions from offenders such as prosecution costs. An increase to the surcharge could mean that it takes longer for these other debts to be paid back in full.
- 12.7 An Equality Statement is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 Ministry of Justice is in the process of developing a comprehensive internal review of court-ordered impositions in the criminal courts; the surcharge will be included in this.

15. Contact

- 15.1 Vanessa Asante at the Ministry of Justice, email: Vanessa.asante@justice.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Catherine Hinwood, Deputy Director for Victim and Witness Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Edward Argar MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.