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Justice Committee Comataidh a' Cheartais

The Victim Surcharge and Victim Surcharge Fund



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. At its meeting on 29 October 2019, the Justice Committee considered the following two instruments:
 - the [Victim Surcharge \(Scotland\) Regulations 2019 \[draft\]](#)
 - the [Victims and Witnesses \(Scotland\) Act 2014 \(Supplementary Provision\) Order 2019 \[draft\]](#)
2. The instruments were laid before the Scottish Parliament on 12 September 2019 and referred to the Justice Committee. The instruments are subject to the affirmative procedure. The Committee is required to report to the Parliament on the instruments by 6 November 2019.

Purpose of the instruments

3. These instruments are part of a package of six Scottish Statutory Instruments (SSIs) which make provision for a victim surcharge and victim surcharge fund.ⁱ
4. The Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act") 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.
5. The Victim Surcharge (Scotland) Regulations 2019 [draft] make provision for the operation of the victim surcharge and the administration of the victim surcharge fund (VSF). The instrument provides that the victim surcharge will be imposed on all persons who are convicted of an offence and receive a court fine. The instrument also sets out the surcharge amount that the person must pay, which is proportionate to the amount of fine imposed by the court. Whilst the instrument is due to come into force on 25 November 2019, and the surcharge will be able to be imposed in respect of offences committed on or after that date, the instrument provides that no payment will be made from the VSF for at least six months. This is to allow time for funds to accumulate in the VSF.
6. The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provision) Order 2019 [draft] makes provision to clarify that the victim surcharge is not a fine.

ⁱ The other SSIs are: the [Victim Surcharge Fund \(Prescribed Relatives\) \(Scotland\) Regulations 2019](#) (negative instrument); the [Enforcement of Fines \(Relevant Penalty\) \(Scotland\) Order 2019](#) (negative instrument); the [Victims and Witnesses \(Scotland\) Act \(Commencement No. 5\) Order 2019](#) (laid only); the [Serious Crime Act 2015 \(Commencement No. 2\) \(Scotland\) Regulations](#) (laid only).

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform Committee considered the instruments at its meeting on 24 September 2019 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

8. Prior to formally considering the instruments, the Justice Committee sought written evidence from relevant organisations. Two responses were received (from the Scottish Courts and Tribunals Service and Victim Support Scotland) and are attached at Annex A.
9. The Cabinet Secretary for Justice, Humza Yousaf, lodged motions S5M-19058 and S5M-19059 proposing that the Justice Committee recommends approval of the instruments. The Committee took evidence from the Cabinet Secretary and his officials on the instruments at its meeting on 29 October 2019.
10. In his opening remarks, the Cabinet Secretary explained how the fund would work and the likely income from the surcharge. The Scottish Government anticipates that around £100,000 could be collected in the first 12 months, rising to £800,000 per annum after four to five years. The fund will be administered by the Scottish Government. The Cabinet Secretary told the Committee:

” This model ... will ensure that victim support organisations can focus on doing what they do best—supporting victims of crime in communities across Scotland. The model also ensures that victims can access quick support at the point of need from those best placed to help them.

Source: Justice Committee, [Official Report 29 October 2019](#), col. 24.

11. In response to questions from Members, the Cabinet Secretary told the Committee:
 - that the recurring costs to the Scottish Government of operating the fund would be £26,000 per annum, which would be recouped from the fund. There would also be costs to the Scottish Courts and Tribunals Service, which would be funded separately;
 - that the model proposed, whereby victim support organisations apply to the fund rather than victims directly, would offer a much quicker and easier way to get money to victims;
 - that guidance would be provided which would set out the criteria that would have to be met for victim support organisations to apply to the fund, but the intention was to be as open as possible;
 - guidance would also cover the types of support that could be paid for from the fund. This could cover, for example, counselling support. However, the Cabinet Secretary emphasised that the purpose of the fund is to cover costs that cannot be met by another funding source.
12. The Cabinet Secretary offered to share a copy of the draft guidance with the Committee, as well as provide further details on the work undertaken by the Scottish Courts and Tribunals Service to ensure that it is ready to collect the surcharge.
13. A number of other issues were raised by Members and the full discussion on the instruments can be found in the [Official Report](#) of the meeting, at columns 23-36.

14. The Cabinet Secretary then moved the following motions:
 - S5M-19058 That the Justice Committee recommends that the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provision) Order 2019 [draft] be approved
 - S5M-19059 That the Justice Committee recommends that the Victim Surcharge (Scotland) Regulations 2019 [draft] be approved
15. The motions were agreed to without debate or dissent.
16. The Justice Committee recommends to the Scottish Parliament that it approve the Victim Surcharge (Scotland) Regulations 2019 [draft] and the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provision) Order 2019 [draft].

Annex A - Written submissions

Written submission from the Scottish Courts and Tribunals Service

I refer to the above call for evidence by the Justice Committee, to which I respond on behalf of the Scottish Courts and Tribunals Service (“the SCTS”).

The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and tribunals in Scotland and does not include the views of the Judiciary.

I can confirm that the SCTS has been kept informed of the making of the relevant statutory instruments and continues to work with colleagues in Scottish Government to ensure that the Victim Surcharge provisions are implemented effectively. Work is ongoing to update the SCTS criminal case management system and guidance will be issued to SCTS staff ahead of the commencement date of 25th November 2019.

Written submission from Victim Support Scotland

Victim Support Scotland (VSS) do not view the SSIs in relation to the Victim Surcharge Fund (VSF) to be contentious and welcome that progress is being made in the establishment of the Fund which has been under consideration for some time.

We welcome the opportunity to continue to work with the Scottish Government with regards to bringing the Victim Surcharge Fund into operation, establishing guidance for the fund and delivering financial support to those who have been affected by crime.

In terms of how the fund will operate, Victim Support Scotland would be optimistic that once the VSF is well-established and fines have accumulated, that it could be used to help address immediate need of victims with the replacement of goods, additional security measures, etc. Further to this, we would like to see the assessment of trends in relation to crimes and how the VSF could be used in line with this knowledge in mind to best support victims as and when they need it.

Victim Support Scotland would like to see a proportion of the Fund to be made eligible for the covering of administration costs and that this level should be revisable in line with reasonable increases in provision on an annual basis. If organisations have to absorb these administrative costs it will impact negatively on resources and support directly available to help victims.

Ensuring funds can be released from the VSF quickly will be fundamental to supporting those victims most in need. For example, while VSS understand the rationale of local authorities fixing locks on doors, our experience is that there are often time delays to this being carried out which leaves victims in a vulnerable position.

Our best estimate is that VSS could distribute £100,000 per annum to meet the immediate needs of victims. However, if we were to be expected to claim back funding from the VSF retrospectively this has the potential to have negative consequences for Victim Support Scotland in terms of cashflow and the ability to provide other services. For our purposes, we would seek to be able to claim for funds on a quarterly basis.

In terms of monitoring and reporting on how VSF funding has been allocated and given that a cap on the use of surcharge funds to cover associated administrative costs is currently being proposed, monthly reporting is too onerous, and monitoring should be conducted on a twice annually basis.

Victim Support Scotland would appreciate it if the guidance were to include information on what happens to surplus funds and whether organisations are able to bank these for future periods, or if this will have an impact on how much funding can be awarded during the subsequent round of applications to the VSF.

VSS currently operate our own separate 'Victims Fund' to cover some of the costs that are being considered as eligible to claim for from the new VSF as part of the block funding we receive from the Scottish Government to meet immediate need. However, it also covers a range of items and services which the draft guidelines do not cover, and payments can be made within 24 hours. We would wish to seek assurances as to whether this fund would be required to be integrated into the VSF and require claims to be made, or if this separate fund with its flexibility and reactivity would be maintained.

