



GOVERNMENT WHIPS' OFFICE  
HOUSE OF LORDS  
LONDON SW1A 0PW

VISCOUNT YOUNGER OF LECKIE  
020 7219 1114

Telephone 020-7219 3131  
[www.lordswhips.org.uk](http://www.lordswhips.org.uk)  
[holgovernmentwhips@parliament.uk](mailto:holgovernmentwhips@parliament.uk)

10 June 2020

Dear Colleagues,

I promised to write to provide answers on questions I was not able to address during the 3 June debate on the 'Victims and Witnesses (Scotland) Act (Consequential Modifications) Order 2020. I would also like to echo my thanks to those who were present and the valuable contribution Peers made on what is an important subject, particularly in light of the current context.

#### Guidance for sheriffs and courts

Lord Wei asked what could be done to ensure that the guidance that sheriffs and courts are given is applied wisely. Guidance on sentencing is for the Scottish Sentencing Council and there is no express statutory power for Scottish Ministers to issue guidance to the courts on the imposition of restitution orders. It is expected however that the Scottish Courts and Tribunal Service (SCTS) would monitor the collection rates for restitution orders in the same manner as they would for fines.

#### Restitution Order Fund

Lord Addington asked if the fund could collapse if there were no deductions from benefits. The Scottish Government estimate that, once established, there will be in the region of 250 to 500 restitution orders a year, with an average value of around £350, giving a total of £87,400 to £175,000. However, the majority of these orders are expected to be paid to the SCTS by offenders from their income. The bulk of the Restitution Fund is not expected to come from deductions from benefits and therefore the fund is not reliant on deductions from benefits.

#### Fines

Lord Naseby asked if the fees for the Restitution Order are likely to increase. The Victims and Witnesses (Scotland) Act 2014 set the upper limit of these orders in line with the prescribed sum (as defined in section 225(8) of the 1995 Act). Scottish Ministers have the power by regulations to vary this upper limit, which is currently set at £10,000. The level of Restitution Order is for the courts to decide in the same way as it currently determines the level of fines for the same offence, taking account of ability to pay. The average fine relating to Section 90(1) offence is £350, therefore restitution orders are expected to be at a similar level. This level is not expected to increase.

## Appeals

Lord Naseby also asked whether deductions from benefits would be suspended whilst an appeal is reviewed. Where there is an appeal against the decision to deduct from benefits or the amount of the deductions made, the Department for Work and Pensions (DWP) does not suspend deductions from benefits whilst the appeal is heard.

It is unlikely that someone would be appealing against a decision to impose a Restitution Order, or the amount of the Restitution Order, whilst deductions from benefits are being made. This is because the deductions would not be made until after a person had defaulted on payment and a court had been able to ask the person about why they had defaulted. It is envisaged that a person would appeal against sentence before this stage. However, if there were such an appeal, the DWP would carry on deducting unless and until the SCTS rescinds the application for deductions. The DWP would normally have no intelligence as regards an appeal against the sentence itself.

Finally, Baroness Barker asked whether an assailant could access their right to appeal without having to seek further public funds to do so. An offender can appeal against the court decision to impose a Restitution Order in the same way as offenders can appeal against other sentences. Appeals to the DWP's first-tier Tribunal, with regard to deductions from benefits, are free to access.

I hope this letter has been useful. I will send a copy to all Peers who spoke and place a copy in the House library.

With best wishes

A handwritten signature in black ink that reads "James Younger". The signature is written in a cursive style with a large, prominent 'Y'.

**VISCOUNT YOUNGER OF LECKIE**