EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (SURCHARGE) (AMENDMENT) ORDER 2016

2016 No. 389

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 At present, when a court sentences an offender it is under a duty to order payment of a surcharge; that is, a specified sum of money which goes towards funding support for victims of crime.

2.2 The sentences which attract payment of a surcharge and the amounts to be ordered are set out in the Criminal Justice Act 2003 (Surcharge) Order 2012 ("the 2012 Order").

2.3 The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2016 (the "2016 Order") increases the level of surcharge to be ordered by replacing the Schedule to the 2012 Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The duty to order a surcharge when dealing with an offender for one or more offences was introduced by the Domestic Violence, Crime and Victims Act 2004 (the "2004 Act") which amended the Criminal Justice Act 2003.

4.2 The Criminal Justice Act 2003 (Surcharge No. 2) Order 2007 ("the 2007 Order") provided that a surcharge would be required to be ordered at a fixed sum of £15 whenever an individual was sentenced to a fine.

4.3 The 2012 Order revoked the 2007 Order and specified increased amounts and further sentences in relation to which a surcharge should be ordered. The provisions came into force for offences committed on or after 1 October 2012.

4.4 The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 amended the 2012 Order extending the circumstances in which the surcharge is payable to immediate custodial sentences in the magistrates' court.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The principle behind the surcharge is to make sure offenders take greater responsibility and pay towards the cost of supporting victims of crime. Revenue raised from the surcharge is ring-fenced for the provision of emotional and practical support for victims.

7.2 The Government is committed to eradicating the deficit as part of its wider policy aim of building a stronger economy. Following the 2015 Spending Review, the MoJ faces a significant reduction to its budget from which it must realise savings both fairly and efficiently.

7.3 The Government however continues to be committed to making sure victims of crime are properly supported and is maintaining current funding levels as a result. The MoJ must, however, find new ways to manage the cost whilst at the same time alleviating current financial pressures on the MoJ budget. It is therefore important that offenders take a greater responsibility in covering the cost of supporting victims of crime by means of an increase to the surcharge levels. Increasing surcharge levels will enable the MoJ to maintain current levels of support for victims of crime, whilst allowing the MoJ to fund other services for which it is responsible.

7.4 The 2016 Order specifies the new surcharge levels as follows:

Adults (over 18s)

i) Conditional Discharge – £20
ii) Fine – 10% of fine value (minimum £30, maximum £170)
iii) Community Order – £85
iv) Immediate custodial sentence (6 months and below) – £115
v) Immediate custodial sentence (over 6 months and up to and including 2 years) – £140
vi) Immediate custodial sentence (over 2 years to life, Crown Court only) – £170
vii) Suspended sentence (6 months and below) – £115
viii) Suspended sentence (over 6 months)– £140

Organisations

i) Conditional Discharge – £20
ii) Fine – 10% of fine value (minimum £30, maximum £170)

Youths (under 18s)

i) Conditional Discharge – £15
ii) Fine, Community Order, Youth Rehabilitation Order or Referral Order – £20
iii) Custodial sentence or suspended sentence – £30

Consolidation

7.5 The powers in the 2004 Act, and the supporting 2012 Order, will be considered as part of an internal review into criminal court ordered financial impositions currently being carried out by the MoJ.

8. Consultation outcome

8.1 None. The Department has ensured the increase continues to reflect commitments in the 2012 public consultation – '*Getting it Right for Victims and Witnesses*'.

8.2 The consultation set out a full explanation of the policy proposals and was published with supporting Impact and Equality Impact Assessments. Further details of the consultation can be found in the explanatory memorandum which accompanied the 2012 Order. Links to the relevant documents can be found below.

https://consult.justice.gov.uk/digital-communications/victims-witnesses

http://www.legislation.gov.uk/uksi/2012/1696/contents/made

9. Guidance

9.1 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

9.2 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.

9.3 A public announcement will be made on www.gov.uk

10. Impact

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

10.2 The impact on the public sector is set out in the impact assessment. The main bodies that will be impacted are MoJ and Her Majesty's Courts and Tribunals Service who will face some additional administrative costs in preparing for the change. We expect that these costs will be minor and met by business as usual activities

10.3 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 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.

10.4 Overall the increase in surcharge levels will help the MoJ maintain spending on support for victims of crime by requiring defendants to contribute a greater share of the cost.

10.5 An Impact Assessment and Equality Statement is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

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

12. Monitoring & review

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

13. Contact

13.1 Rabiah Narey at the Ministry of Justice, telephone: 07580701464 or email: rabiah.narey@justice.gsi.gov.uk, can answer any queries regarding the instrument.