POLICY NOTE

THE RESTITUTION FUND (SCOTLAND) ORDER 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 253B(5) and (6) of the Criminal Procedure (Scotland) Act 1995. The instrument is subject to affirmative procedure.

Summary Box

The Restitution Fund (Scotland) Order 2025 ("the Order") revokes the Restitution Fund (Scotland) Order 2021 in order to remove the Scottish Police Benevolent Fund as the operator of the Restitution Fund. The Order maintains provision for the administration of the Fund including; making payments from the Fund (including the requirement for written applications); record keeping; and reporting back to Ministers.

Policy Objectives

The Victims and Witnesses (Scotland) Act 2014 ('the 2014 Act') introduced various measures to improve the support and information available to victims and witnesses of crime. This included provisions to introduce a new financial penalty of a restitution order to be available to the courts for those convicted of assault on police or police staff (under section 90(1) of the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act").

Monies received from restitution orders have been paid into the Restitution Fund, which will then be used to provide support services for victims of such assault. The Fund will be used to support both physical and mental health and wellbeing. It should be noted that, the monies paid in respect of a restitution order imposed on an offender are not for the sole benefit of the victim of the individual offence, they will be paid into the Restitution Fund for the benefit of victims of this offence in general.

The policy aim is that those who are convicted of the section 90(1) offence, will make a contribution towards support services for victims of this offence in general. In addition there is an intention to give a clear message that assault on police officers and staff is unacceptable.

Police officers and staff who are victims of assault can currently access support services, for example through the Police Treatment Centres, the Scottish Police Benevolent Fund, or through Police Scotland's occupational health and employee assistance. The creation of the Restitution Fund will make additional funds available for support services, to be used for police officers and staff, and other persons (as identified under section 90(1) of the 2012 Act) who are victims of the offence.

Those who are eligible will be able to apply to the Fund and request support that meets their individual physical or mental health and wellbeing needs. This support may be provided through traditional routes such as the Police Treatment Centres and the Scottish Police Benevolent Fund, or it may be secured from another provider. This will benefit police officers and staff as individuals, and will be providing a greater overall resource for support services to the benefit of officers and staff.

The Restitution Fund (Scotland) Order 2021 designated the Scottish Police Benevolent Fund as the operator of the Fund, following the Scottish Police Benevolent Fund's agreement to take on the role. As of 30 June 2021, the Scottish Police Benevolent Fund withdrew as the operator of the Restitution Fund, through a formal notification to the Cabinet Secretary for Justice and Veterans.

This order revokes the Scottish Police Benevolent Fund as the operator of the Fund.

Operation of the Restitution Fund

The Scottish Ministers will administer the Restitution Fund via the SG Restitution Fund Sponsoring Team.

The Scottish Ministers will incorporate decision making on the Restitution Fund into existing decision-making structures.

The Restitution Fund will be 'ring-fenced' for the intended purpose as set out in legislation.

Annex A provides a flow chart on the overall process from the restitution orders to the Restitution Fund. Annex B provides a narrative and a flow chart, on the arrangements for the operation of the fund.

The Scottish Ministers, via the SG Restitution Fund Sponsoring Team, will be required by the Restitution Fund (Scotland) Order 2025 to keep records and provide reports on an annual basis.

Beneficiaries of Restitution Fund

Eligible beneficiaries are persons who provide or secure the provision of support services for victims per s.253B(4) of the 1995 Act.

This includes those acting in the capacity of a constable, member of police staff, member of other relevant police force acting in Scotland, member of a joint investigation team, or other persons who were assisting those noted above whilst acting in that capacity.

Police officers (or any other persons) who are not a victim of assault as mentioned in section 90(1), are not eligible for support services funded by the Restitution Fund. For example, a restitution order cannot be imposed for the offence of resisting, obstructing or hindering a person acting in a capacity of constable etc, and the Restitution Fund cannot be used to secure support services for victims of that offence.

Retired police officers, or police staff, who were a victim of assault as mentioned in section 90(1) of the Police and Fire Reform (Scotland) Act 2012 are eligible for support.

Provision of Support Services

The Fund will be used to support both physical and mental health and wellbeing. Support services can be any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim. This can extend to the purchase of equipment or adjustments if appropriate. The main limitation is that the Restitution Fund cannot be used to provide a direct payment to victims.

Police officers and custody officers are those most likely to be victims of assault under section 90(1). For most, support such as offered by the Police Treatment Centre and the

Scottish Police Benevolent Fund is expected to be appropriate. However to ensure appropriate support is available for all those eligible, it will be possible to apply for support services to meet individual needs (e.g. a different type of support, setting or location.)

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Restitution Fund (Scotland) Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

A public consultation paper, 'Making Justice Work for Victims and Witnesses' was published in July 2012 prior to the introduction of the Victims and Witnesses Bill, which led to the 2014 Act. This included consultation on the introduction of restitution orders.

In 2019, the Scottish Government established a working group to consult with stakeholders on the operation of the Restitution Fund, including Police Scotland, police officer staff associations, police staff unions, Police Treatment Centres and the Scottish Police Benevolent Fund. In particular, the group focused on ensuring that support from the Restitution Fund could be accessed by all those eligible, and that administration was not a large burden in relation to the scale of the Restitution Fund.

Police officers and custody officers are those most likely to be victims of assault under section 90(1), however other persons (as defined in the legislation) should have access to the fund as appropriate.

No further consultation has been undertaken as the intention of this order has not changed.

Impact Assessments

Having the Scottish Ministers as the operator of the Fund does not introduce any barriers or changes to the way the Restitution Fund will be operated, and a revision of the original Equality Impact Assessment (EQIA) has been completed. This concluded that the provisions in this instrument does not discriminate in any significant way on the basis of age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief.

Beneficiaries of support from the Restitution Fund will be eligible on the basis that they are victims of assault on police and police staff (under section 90(1) of the 2012 Act). Access to support from the Fund is not impacted by any protected characteristic. When considering the operation of the Restitution Fund in 2019, the Restitution Fund Working Group recognised the need to ensure that all those eligible for support from the Restitution Fund should have the opportunity to access support that meet their needs (within the limits of the funds available). Therefore the operation of the Fund allows for applications to the Fund to meet an

individual's needs, rather than offering only a limited range of services. This will mitigate against any unforeseen impacts on protected characteristics.

For offenders, courts will have the option of imposing a restitution order by virtue of the offence, and this is not impacted by the protected characteristics. We anticipate that in a given situation the level of financial penalty imposed by the courts is likely to be the same regardless of whether it is a restitution order or another financial penalty such as a fine. The financial impact on the offender and their family, and any resulting impacts, are therefore anticipated to be unchanged as a result of the implementation of restitution orders.

A legislative Data Protection Impact Assessment (DPIA) is not required as the new Order does not create new powers for SG (or any other body), however, an operational DPIA will be required in due course, within 6 months following commencement of the Restitution Fund (Scotland) Order 2025, prior to be data being collected from applicants seeking to obtain funds.

A Child Rights and Wellbeing Impact Assessment (CRWIA) has been completed noting that there are no impacts on Children's Rights as per UNCRC requirements.

A Business and Regulatory Impact Assessment (BRIA) has not been undertaken, as this Order has no impact on business.

A Strategic Environmental Assessment (SEA), Fairer Scotland Duty (FSD), and Island Communities Impact Assessment (ICIA) have not been undertaken, as this Order only intends to update the operator of the Restitution Fund.

Financial Effects

Collection of Restitution Orders

Restitution orders will be collected, like fines, by the Scottish Courts and Tribunals Service (SCTS) and similarly enforced. This is underpinned by the **Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020**, which specifies that restitution orders are a "relevant penalty" for the purposes of the fine enforcement rules.

SCTS will regularly make the transfer of the amount of restitution orders to the Scottish Ministers for payment into the Restitution Fund. The Scottish Government will operate the Fund.

Estimated Value of Restitution Orders

Whether to impose a restitution order for the section 90(1) offence, and the level of that financial penalty, will be a matter for the courts to decide. It is therefore not certain what the value of restitution orders will be in any given year

The maximum sum that can be imposed for a restitution order is "the prescribed sum" which is fixed in section 225(8) of the Criminal Procedure (Scotland) Act 1995. That sum is currently fixed at £10,000. It is worth emphasising that this is the maximum sum that can be imposed, and on the basis of information in relation to the use of fines for the same offence, it is likely that the average sum will be significantly lower than this.

At the time of the Restitution Fund (Scotland) Order 2021, it was estimated the potential of restitution orders, on the basis of information on fines where section 90(1) is the main

offence, that there could be in the region of 250 to 500 restitution orders a year, with an average value of around £350, giving a total of £87,500 to £175,000.

The actual number of orders imposed, and the value of fines imposed and collected, since 2021, is set out in the table below. Based on this data, it is now estimated that around 36 restitution orders a year could be imposed. Based on an average value of around £225 per order, the Fund could increase by around £8,100 per year. However, fines by the courts may be paid in instalments across an agreed period of time, depending on the offenders' ability to pay, therefore the amount collected in any year, will likely be less than the value of the amount imposed.

Restitution Fund	**2021-22**	**2022-23**	**2023-24**	**2024-25**
Orders Imposed	16	15	37	35
Amount Imposed	£3,665	£1,730	£8,384	£7,905
Amount Paid	£2,050	£934	£2,008	£4,987

Data provided by Scottish Courts and Tribunals Service – February 2025

This data shows that the Restitution Fund is taking time to build, and funds will continue to be dependent on the penalty being imposed and monies collected. No payments will be made from the Restitution Fund for period of at least six months from the date of the Order coming into force to let funds accrue further.

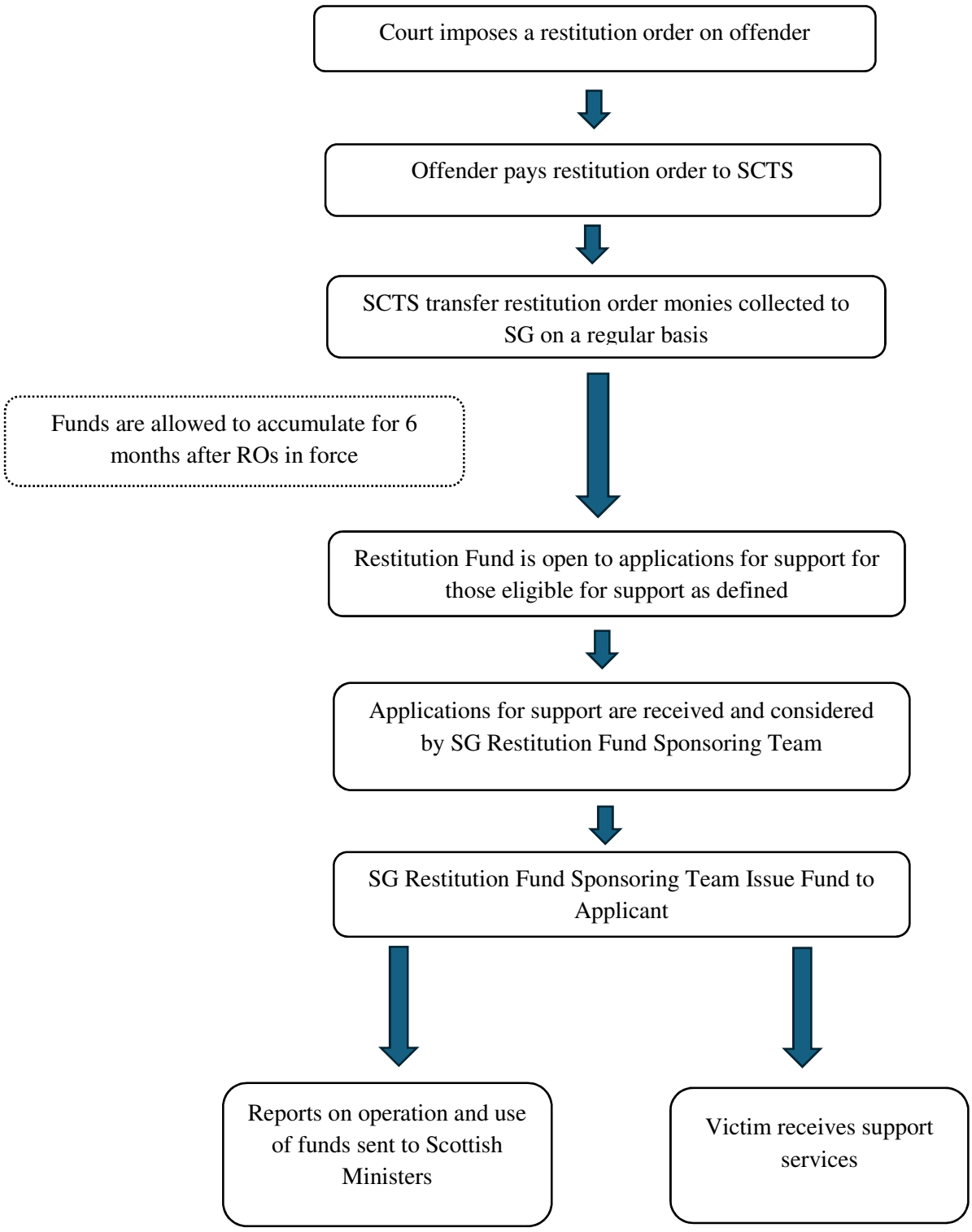
The Cabinet Secretary for Justice and Home Affairs confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary, as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Safer Communities Directorate

April 2025

Annex A

Flowchart of Proposed Model of Restitution Orders



Annex B

Restitution Fund Application Process

The flow chart below reflects the application process envisaged for restitution order funding through the SG Restitution Fund Sponsoring Team.

The applications will be received and assessed by the Restitution Fund Sponsoring Team -, and then forwarded to the Restitution Fund Panel for consideration of the application and the allocation of funds. The application will identify that it is a Restitution Fund application.

Consideration by the Restitution Fund Panel applies the correct level of scrutiny for the allocation of funds.

If required, a member of the Panel can arrange to visit an applicant to confirm the details of the application.

The remainder of the process reflects the request and allocation of funds.

A record of all applications will be retained by the SG Restitution Fund Sponsoring Team for audit purposes as well as the amount expended annually, or whatever time period is deemed appropriate.

The flow chart is attached and will be included in the Restitution Fund Guidance.

Restitution Fund consideration would become a standing item SG Restitution Fund Sponsoring Team.

