EXPLANATORY MEMORANDUM TO

THE SENTENCING ACT 2020 (SURCHARGE) (AMENDMENT) REGULATIONS 2022

2022 No. 584

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 These Regulations increase the amount of the Surcharge imposed on offenders under section 43 of the Sentencing Act 2020, the proceeds of which contribute to funding support for victims and witnesses of crime. These Regulations increase the current Surcharge levels by 20%. They also change the way the Surcharge is imposed alongside a fine, by removing the minimum collar, increasing the percentage amount paid to 40% and increasing the maximum cap to £2,000.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 The duty on a court 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 which inserted sections 161A and 161B into Part 12 of the Criminal Justice Act 2003. These provisions have been replaced by sections 42 and 43 of the Sentencing Act 2020. Section 42 of the 2020 Act enables the Secretary of State to specify cases in which the duty to order a surcharge does not apply, whilst section 43 of the 2020 Act enables the Secretary of State to specify the amount payable as a Surcharge. The current Surcharge levels are set out in the Schedule to the Criminal Justice Act (Surcharge) Order 2012 ("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 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 5% uplift, applied annually and compounded. The Criminal Justice Act 2003 (Surcharge)(Amendment) Order 2019 ("the 2019 Order") further increased the Surcharge in line with inflation for 2018/19 and expected inflation for 2019/20 and 2020/21. The Criminal Justice Act (Surcharge)(Amendment) Order 2020 further amended the 2019 Order to increase surcharge levels by 5% to fund support for victims and witnesses of crime.

6.4 These Regulations amend the 2012 Order to increase Surcharge levels to fund support for victims and witnesses of crime. In addition, the Schedule to these Regulations replaces sentences in the Schedule to the 2012 Order due to the consolidation of sentencing law by the Sentencing Act 2020 which came into force on 1 December 2020.

7. Policy background

What is being done and why?

7.1 The aim of the Surcharge is to ensure offenders contribute 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 collected from the Surcharge 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
2016/17	£31m	£27m	£96m
2017/18	£35m	£31m	£96m
2018/19	£34m	£31m	£96m
2019/20	£40m	£40m	£92m
2020/21	£35m	£35m	£100m

1. The amounts listed in the table have been rounded to the nearest £1m.
2. In 2020/21 as a result of the COVID-19 pandemic there was a lower number of hearings and a short-term restriction of selected enforcement activity which resulted in a reduction of both impositions and collections.
3. In the years 2016/17 to 2018/19 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 included in the victim and witness receipts (as was the case prior to 2015/16).

7.3 The income generated by the Surcharge is used to help fund local support services commissioned by Police and Crime Commissioners (PCCs), and national support. The national support funded includes; rape support centres across England and Wales, the Court Based Witness Service, and the National Homicide Service.

7.4 The Government is committed to ensuring victims receive the help they need to cope with what has happened and move forward when they are ready to in the aftermath of a crime. For this to happen, the right services need to be in place and accessible to all victims, with appropriate levels of funding to ensure sustainability, quality and resilience. The new Victims Funding Strategy will propose a framework to better align funding across government and strengthen commissioning standards through national standards and consistent metrics and outcomes.

7.5 The purpose of these Regulations is twofold. Firstly, to increase all Surcharge rates by 20% rounded to the nearest pound. Following an initial 5% increase completed in 2020, this 20% increase enables the Government to meet the pre-election commitment to increase the Surcharge by 25% by 2024/25 ahead of schedule. The increased rates also ensure that offenders continue to make a proportionate contribution to supporting victims and witnesses of crime.

7.6 Secondly, these regulations change how the Surcharge is imposed alongside a fine. Currently, this is the only Surcharge rate that has a minimum and maximum cap, with a percentage amount in between. This Order removes the minimum collar (currently £34), increases the percentage amount (from 10% to 40%), and increases the maximum cap (from £190 to £2,000). Increasing the maximum cap will account for the higher fines that organisations receive and will address the disparity between what they and most individuals pay, relative to the fines they receive.

7.7 The tables below provide the current and new levels of surcharge as specified in these Regulations.

Table 1 Current Surcharge rates, as specified in the 2020 Order

Sentence	**Adults (18+)**	**Youth (under 18 at time of offence)**	**Organisations**
Conditional discharge	£22	£17	£22
Fine	10% of fine value, min £34 max £190	£22	10% of fine value, min £34 max £190
Community Order	£95	£22	
Suspended sentence of imprisonment (6 months or less)	£128		
Suspended sentence of imprisonment (over 6 months)	£156		
Immediate custodial sentence (6 months or less)	£128	£34	
Immediate custodial sentence (more than 6	£156	£34	

months – up to and including 2 years)			
Immediate custodial sentence (over 2 years - life)	£190	£34	
Youth rehabilitation order or referral order		£22	

Table 2 Proposed Surcharge rates

Sentence	**Adults (18+)**	**Youth (under 18 at time of offence)**	**Organisations**
Conditional discharge	£26	£20	£26
Fine	40% of fine, max £2,000	£26	40% of fine, max £2,000
Community Order	£114	£26	
Suspended sentence of imprisonment (6 months or less)	£154		
Suspended sentence of imprisonment (over 6 months)	£187		
Immediate custodial sentence (6 months or less)	£154	£41	
Immediate custodial sentence (more than 6 months – up to and including 2 years)	£187	£41	
Immediate custodial sentence (over 2 years - life)	£228	£41	
Youth rehabilitation order or referral order		£26	

7.8 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 these increases to the surcharge may lengthen the time taken for successful collection. NCES continue to work to develop their collection and enforcement capabilities to ensure that these lengthier collection times can be managed. This includes learnings from the Historic Debt Project, that ran between September 2016 and October 2018, which have now been embedded into business-as-usual processes.

8. Withdrawal and Future Relationship

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 changes implemented in these Regulations have been subject to a full public, formal consultation process, as part of the consultation undertaken for the Victims Bill. The consultation, '*Delivering justice for victims: A consultation on improving victims' experiences of the justice system'*[1] set out an explanation of the policy proposals.

10.2 We received 127 responses to the question in the consultation that asked if we should explore increasing the Surcharge. Of these responses, 97 (76%) agreed, with reasons given including the view that it would help provide accountability and act as a deterrent for perpetrators (22 responses) and that it would help fund support services (34 responses).

10.3 There were 30 responses (24%) that did not support an increase, with reasons including a view that responsibility for funding support services should be with the Government and general taxpayer funds, concerns relating to the Surcharge having unintended consequences and a lack of data to evidence the impact of the Surcharge and what it currently funds.

10.4 Within the consultation, we asked if we should consider an overall percentage increase for the Surcharge. Of the 49 responses to this question, 33 (67%) agreed with an overall percentage increase, with 10 responses explicitly supporting a 20% increase and 5 responses supporting a 50% increase. Recurring suggestions were made for the Surcharge to be dependent on the crime and its impact, and for the Surcharge to be means tested.

10.5 We also asked whether we should increase the minimum rate for the Surcharge. Of the 63 responses, 35 responses (56%) agreed and 28 responses (44%) disagreed.

10.6 Finally, in response to the question of reviewing the Surcharge for fines, 60 (67%) of the 90 responses agreed that the Government should review the Surcharge for fines. There was broad agreement that this should also be means tested, dependent on the crime and that the cap/maximum for organisations should be increased.

10.7 We also consulted with key stakeholders, including the Senior Presiding Judge's Office, The Sentencing Council, HMCTS and Welsh Government officials on these changes.

[1] Delivering justice for victims: A consultation on improving victims' experiences of the justice system - GOV.UK (www.gov.uk)

11. Guidance

11.1 Information and guidance about the increase and changes to 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 There is 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 estimated to generate additional income of £19.4m by the end of 2024/25, increasing each year until reaching a steady state of £39.8m additional income per annum from 2029/30. This income will contribute towards the Victim and Witness Budget.

12.4 A full Impact Assessment and Equality Statement is submitted with this memorandum and 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 Amounts collected and collection rates are monitored via our routine forecasting analysis and management accounts processes.

15. Contact

15.1 Jasmin Cheung at the Ministry of Justice, email: victimservicescommissioning@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Miriam Minty, Deputy Director for Victim and Witness Commissioning and Implementation, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Tom Pursglove MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.