



# Criminal Justice (Scotland) Act 1980

## 1980 CHAPTER 62

### PART IV

#### COMPENSATION BY OFFENDERS

#### **58 Compensation order against convicted person**

- (1) Subject to subsection (3) below, where a person is convicted of an offence the court, instead of or in addition to dealing with him in any other way, may make an order (in this Act referred to as " a compensation order ") requiring him to pay compensation for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence:

Provided that it shall not be competent for a court to make a compensation order—

- (a) where, under section 182 of the 1975 Act, it makes an order discharging him absolutely ;
  - (b) where, under section 183 of that Act, it makes a probation order; or
  - (c) at the same time as, under section 219 or 432 of that Act, it defers sentence.
- (2) Where, in the case of an offence involving the dishonest appropriation, or the unlawful taking and using, of property or a contravention of section 175(1) of the Road Traffic Act 1972 (taking motor vehicle without authority etc.) the property is recovered, but has been damaged while out of the owner's possession, that damage (however and by whomsoever it was in fact caused) shall be treated for the purposes of subsection (1) above as having been caused by the acts which constituted the offence.
- (3) No compensation order shall be made in respect of—
- (a) loss suffered in consequence of the death of any person; or
  - (b) injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated, by virtue of subsection (2) above, as having been caused by the convicted person's acts.

## **59 Amount of compensation order**

- (1) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such order, the court shall take into consideration his means so far as known to the court:

Provided that where the person is serving, or is to serve, a period of imprisonment or detention no account shall be taken, in assessing such means, of earnings contingent upon his obtaining employment after release.

- (2) In solemn proceedings there shall be no limit on the amount which may be awarded under a compensation order.
- (3) In summary proceedings—
  - (a) a sheriff, or a stipendiary magistrate appointed under section 5 of the District Courts (Scotland) Act 1975, shall have power to make a compensation order awarding in respect of each offence an amount not exceeding the prescribed sum (within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975);
  - (b) a judge of a district court (other than such stipendiary magistrate) shall have power to make a compensation order awarding in respect of each offence an amount not exceeding £200.

## **60 Payment under compensation order**

- (1) Payment of any amount under a compensation order shall be made to the clerk of the court who shall account for the amount to the person entitled thereto.
- (2) Only the court shall have power to enforce a compensation order.

## **61 Guidance as to whether compensation order or fine should be preferred**

Where a court considers that in respect of an offence it would be appropriate to impose a fine and to make a compensation order but the convicted person has insufficient means to pay both an appropriate fine and an appropriate amount in compensation the court should prefer a compensation order.

## **62 Precedence of compensation order over fine**

Where a convicted person has both been fined and had a compensation order made against him in respect of the same offence or different offences in the same proceedings, a payment by the convicted person shall first be applied in satisfaction of the compensation order.

## **63 Appeal as regards compensation order**

- (1) For the purposes of any appeal or review, a compensation order is a sentence.
- (2) Where a compensation order has been made against a person, a payment made to the court in respect of the order shall be retained until the determination of any appeal in relation to the order.

## **64 Review of compensation order**

Without prejudice to the power contained in section 395A of the 1975 Act, (as applied by section 66 of this Act), at any time before a compensation order has been complied with or fully complied with—

- (a) in a case where, as respects the compensation order, a transfer of fine order under section 403 of the 1975 Act (as applied by the said section 66) is effective and the court by which the compensation order is enforceable is in terms of the transfer of fine order a court of summary jurisdiction in Scotland, that court; or
- (b) in any other case, the court which made the compensation order or (where that court was the High Court) by which the order was first enforceable,

may, on the application of the person against whom the compensation order was made, discharge the compensation order, or reduce the amount that remains to be paid, if it appears to the court either that the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the compensation order or that property the loss of which is reflected in the compensation order has been recovered.

## **65 Acts of adjournal**

The High Court's power to make Acts of Adjournal under sections 282 and 457 of the 1975 Act shall include power to make rules with regard to any of the provisions of this Part of this Act, including rules relating to the award and payment, by compensation orders, of sums to persons under any legal disability.

## **66 Application of provisions relating to fines to enforcement of compensation orders**

- (1) The provisions of the 1975 Act specified in subsection (2) below shall, subject to any necessary modifications and to the qualifications mentioned in that subsection, apply in relation to compensation orders as they apply in relation to fines ; and sections 91 of the Magistrates' Courts Act 1980 and 104B of the Magistrates' Courts Act (Northern Ireland) 1964 shall be construed accordingly.
- (2) The provisions mentioned in subsection (1) above are—
  - section 194 (application to solemn procedure of summary procedure provisions relating to fines);
  - section 196 (fines etc., may be enforced in other district);
  - section 395(2) to (7) (application of money found on offender);
  - section 395A (power to remit fines), with the omission of the words " or (4) " in subsection (2) of that section ;
  - section 396 (time for payment) with the omission of the words from " unless " to " its decision " in subsection (4) and of subsection (5) of that section ;
  - section 397 (further time for payment);
  - section 398 (reasons for default);
  - section 399 (payment by instalments);
  - section 400 (supervision pending payment of fine);
  - section 401 (supplementary provisions), except that subsection (1) of that section shall not apply in relation to compensation orders made in solemn proceedings;
  - section 402 (fines etc., may be enforced in another district);
  - section 403 (transfer of fine orders);

---

*Status: This is the original version (as it was originally enacted).*

---

section 404 (action of clerk of court on transfer of fine order);  
section 406 (substitution of custody for imprisonment where child defaults on fine);  
section 407(1)(b), (1A), (1B), (1D), (2) and (4) (maximum period of imprisonment for non-payment of fine):

Provided that—

- (a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a compensation order but not *vice versa*; and
- (b) where a court imposes imprisonment both in respect of a fine and of a compensation order the amounts in respect of which imprisonment is imposed shall, for the purposes of the said subsection (1A), be aggregated;

section 408 (discharge from imprisonment to be specified);  
section 409 (payment of fine in part by prisoner);  
section 411 (recovery by civil diligence); and  
Schedule 7 (application of sums paid as part of fine under section 409).

## **67 Effect of compensation order on subsequent award of damages in civil proceedings**

- (1) This section shall have effect where a compensation order has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect thereof subsequently falls to be determined.
- (2) The damages in the civil proceedings shall be assessed without regard to the order; but where the whole or part of the amount awarded by the order has been paid, the damages awarded in the civil proceedings shall be restricted to the amount (if any) by which, as so assessed, they exceed the amount paid under the order.
- (3) Where the whole or part of the amount awarded by the order remains unpaid and damages are awarded in a judgment in the civil proceedings, then, unless the person against whom the order was made has ceased to be liable to pay the amount unpaid (whether in consequence of an appeal, or of his imprisonment for default or otherwise), the court shall direct that the judgment—
  - (a) if it is for an amount not exceeding the amount unpaid under the order, shall not be enforced; or
  - (b) if it is for an amount exceeding the amount unpaid under the order, shall not be enforced except to the extent that it exceeds the amount unpaid,without the leave of the court.