



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

Compensation

249 Compensation order against convicted person

- (1) Subject to subsections (2) and (4) 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 Part of 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.
- (2) It shall not be competent for a court to make a compensation order—
 - (a) where, under section 246(2) of this Act, it makes an order discharging him absolutely;
 - (b) where, under section 228 of this Act, it makes a probation order; or
 - (c) at the same time as, under section 202 of this Act, it defers sentence.
- (3) Where, in the case of an offence involving dishonest appropriation, or the unlawful taking and using of property or a contravention of section 178(1) of the Road Traffic Act 1988 (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.
- (4) 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 (3) above, as having been caused by the convicted person’s acts.

- (5) 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.
- (6) For the purposes of subsection (5) above, in assessing the means of a person who is serving, or is to serve, a period of imprisonment or detention, no account shall be taken of earnings contingent upon his obtaining employment after release.
- (7) In solemn proceedings there shall be no limit on the amount which may be awarded under a compensation order.
- (8) 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;
 - (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 level 4 on the standard scale.
- (9) 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.
- (10) Only the court shall have power to enforce a compensation order.

250 Compensation orders: supplementary provisions

- (1) 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.
- (2) 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.
- (3) For the purposes of any appeal or review, a compensation order is a sentence.
- (4) 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.

251 Review of compensation order

- (1) Without prejudice to the power contained in section 213 of this Act, (as applied by section 252 of this Act), at any time before a compensation order has been complied with or fully complied with, the court, on the application of the person against whom the compensation order was made, may discharge the compensation order or reduce the amount that remains to be paid if it appears to the court that—
 - (a) 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

- (b) that property the loss of which is reflected in the compensation order has been recovered.
- (2) In subsection (1) above “the court” means—
- (a) in a case where, as respects the compensation order, a transfer of fine order under section 222 of this Act (as applied by the said section 252) 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.

252 Enforcement of compensation orders: application of provisions relating to fines

- (1) The provisions of this 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 section 91 of the Magistrates' Courts Act 1980 and article 96 of the Magistrates' Courts (Northern Ireland) Order 1981 shall be construed accordingly.
- (2) The provisions mentioned in subsection (1) above are—
- section 211(3), (4) and (7) to (9) (enforcement of fines);
 - section 212 (fines in summary proceedings);
 - section 213 (power to remit fines), with the omission of the words “or (4)” in subsection (2) of that section;
 - section 214 (time for payment) with the omission of—
 - (a) the words from “unless” to “its decision” in subsection (4); and
 - (b) subsection (5);
 - section 215 (further time for payment);
 - section 216 (reasons for default);
 - section 217 (supervision pending payment of fine);
 - section 218 (supplementary provisions), except that subsection (1) of that section shall not apply in relation to compensation orders made in solemn proceedings; subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8) (maximum period of imprisonment for non-payment of fine);
 - section 220 (payment of fine in part by prisoner);
 - section 221 (recovery by civil diligence);
 - section 222 (transfer of fine orders);
 - section 223 (action of clerk of court on transfer of fine order); and
 - section 224 (discharge from imprisonment to be specified).
- (3) In the application of the provisions of section 219 of this Act mentioned in subsection (2) above for the purposes of subsection (1) above—
- (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 subsection (2) of the said section 219, be aggregated.

253 Effect of compensation order on subsequent award of damages in civil proceedings

- (1) This section shall have effect where a compensation order or a service compensation order or award 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 or award; but where the whole or part of the amount awarded by the order or award 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 or award.
- (3) Where the whole or part of the amount awarded by the order or award remains unpaid and damages are awarded in a judgment in the civil proceedings, then, unless the person against whom the order or award 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 or award, shall not be enforced; or
 - (b) if it is for an amount exceeding the amount unpaid under the order or award, shall not be enforced except to the extent that it exceeds the amount unpaid, without the leave of the court.
- (4) In this section a “service compensation order or award” means—
 - (a) an order requiring the payment of compensation under paragraph 11 of—
 - (i) Schedule 5A to the Army Act 1955;
 - (ii) Schedule 5A to the Air Force Act 1955; or
 - (iii) Schedule 4A to the Naval Discipline Act 1957; or
 - (b) an award of stoppages payable by way of compensation under any of those Acts.