

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

Part 3 – Penalties

Penalties as alternative to prosecution

Section 50: Fixed penalty and compensation offers

275. This section provides considerable changes in procedures relating to existing alternatives to prosecution, and introduces a new alternative to prosecution, to be known as the compensation offer. It makes significant amendments to sections 302 and 303 of the 1995 Act, and introduces a number of new sections to that Act. Sections 302 and 303 deal with conditional offers of a fixed penalty by prosecutors (generally known as “fiscal fines”).

Conditional offers – changes to procedures etc

276. Subsection (1)(a) amends section 302(2) of the 1995 Act, which covers the information which requires to be provided to the alleged offender in a conditional offer. The amendments take account of the revised procedure introduced by this Act. It is also made clear that an offer letter can stipulate that the whole penalty is to be paid in a single instalment.

277. Subsection (1)(c) inserts subsections (4A) - (4C) into section 302 of the 1995 Act. This effects a change to the way in which fixed penalties are administered. Acceptance of a conditional offer of a fixed penalty will now be either by making any payment in respect of the offer, or by taking no action in respect of the offer. Currently, an offer of a fixed penalty requires the suspected offender to take positive steps to accept it. The terms of these new subsections render subsections (5) and (6) of section 302 redundant, and these are repealed by subsection (1)(d) of this section.

278. Subsection (1)(b) makes a consequential amendment to section 302(4) of the 1995 Act, to oblige the clerk of court to notify the procurator fiscal whether or not the conditional offer has been rejected.

279. Subsections (1)(e), (f) and (g) amend the maximum level of a conditional offer from level 1 on the standard scale (presently £200) to £300. The Scottish Ministers are given power to further increase the maximum by order, subject to affirmative procedure.

280. Subsection (1)(h) inserts new subsections (8A) and (8B) into section 302 of the 1995 Act. Subsection (8A) raises a rebuttable presumption that the alleged offender has received a conditional offer if it is sent to: the address given by the alleged offender in relation to a recall application under section 302C(1) (see paragraphs 291 to 296 below); or to any address which the alleged offender has given to the clerk of court or the procurator fiscal in respect of that offer. Subsection (8B), in turn, raises a presumption

in relation to the operation of section 141(4) of the 1995 Act, which covers the citation of accused persons to court. It provides that citation of the accused will be presumed to have been successfully effected if sent to the same address at which it can be proved the accused received a conditional offer, or at another address given by the accused in connection with that offer.

281. Subsection (1)(i) amends section 302(9) of the 1995 Act. It extends the range of offences for which conditional offers can be made. At present a conditional offer can be made in respect of any offence which can be tried in the district court. Subject to the exclusion of certain road traffic offences set out in section 302(9) of the 1995 Act, it will now be competent to make a conditional offer in relation to any offence which can be tried summarily.

New section 302A - compensation offer

282. **Section 50(2)** introduces three new sections into the 1995 Act (sections 302A to 302C). The first of these sections, 302A, creates compensation offers by the procurator fiscal and provides a mechanism for their operation. Many of the procedures are identical to, or similar to, those made for the operation of the new system which will apply to conditional offers of a fixed penalty.
283. A procurator fiscal is permitted by section 302A(1) to send a compensation offer to an alleged offender where it seems that a relevant offence has been committed. A relevant offence is defined in section 302A(13) as an offence which can be tried summarily, and for which a court could competently make a compensation order (section 49 and paragraphs 272 to 274 above refer). The offer document is required by section 302A(2) to give the accused similar information to that given in a conditional offer of a “fiscal fine”. This includes provision that the prosecutor can stipulate that payment of the whole amount is to be made in one instalment.
284. Section 302A(3) provides that a compensation offer can be made in respect of more than one relevant offence. Section 302A(4) obliges the clerk of court to advise the procurator fiscal whether notice has been given that the offer has been rejected. Sections 302A(5) and (6) provide that acceptance of an offer is deemed either if payment is made to the offer, or if the alleged offender takes no action to expressly reject it.
285. Section 302A(7) provides that if a compensation offer is accepted no prosecution can take place, and no conviction will be recorded.
286. Section 302A(8) and (9) provide that the maximum amount of a compensation offer is to be set by the Scottish Ministers, but that it is not to exceed level 5 on the standard scale (presently £5000).
287. Sections 302A(10) and 302A(11) make provision for presumption of service of further compensation offers and in respect of citations served in terms of section 141(4) of the 1995 Act. These are the same as those described at paragraph 280 above.

New section 302B – combined fixed penalty and compensation offer

288. Section 302B makes provision to allow prosecutors to make a conditional offer combining elements of both a fine and compensation. Any such offer will be regarded as a “combined offer”.
289. Section 302B(3) sets out the additional information which requires to be provided in a combined offer, which in terms of section 302B(2) requires to be in a single notice.
290. Section 302B(4) provides that acceptance of part of any such offer will be regarded as applying to the whole offer. This guards against the possibility that, faced with two separate offers of a fine and compensation for the same incident, the alleged offender will accept one and reject the other.

New section 302C – recall of fixed penalty or compensation offer

291. Section 302C provides a mechanism for recalling a “fiscal fine” offer or compensation offer. Section 302C(1) provides that the alleged offender can make a request for recall where s/he has taken no action in respect of the offer and it is deemed to have been accepted.
292. Section 302C(2) provides that recall of deemed acceptance can be sought where the alleged offender claims that s/he did not receive the offer; or where the offer was received but the alleged offender claims that it was not practicable because of exceptional circumstances for notice of refusal of the offer to be given. In both cases the alleged offender must also claim that the offer would have been refused.
293. Section 302C(3) provides that where the alleged offender wishes to apply to have the deemed acceptance recalled, s/he must apply to the clerk of court within certain time limits. However, section 302C(4) permits the clerk to consider a request for recall outwith those time limits on cause shown. In terms of section 302C(5), on receipt of an application for recall the clerk of court may either uphold or recall the offer.
294. Section 302C(6) gives the alleged offender the right to apply to the court which is specified in the offer for review of the clerk of court’s decision, and section 302C(7) gives the court power, in turn, to confirm or quash the clerk’s decision. Section 302C(8) provides that the court’s decision is final.
295. The clerk of court is obliged by section 302C(9) to inform the procurator fiscal of a request for recall, an application for review of the clerk’s decision, and any decision taken either by the clerk or the court in connection with the application.
296. Section 302C(10) provides that for the purposes of considering an application for recall the procurator fiscal can certify when the offer was sent.

Further provisions on enforcement

297. [Section 50\(3\)](#) makes further provision in relation to enforcement of alternatives to prosecution, and amends section 303 of the 1995 Act accordingly.
298. Subsection (3)(a) provides that, where an alternative to prosecution has been accepted, any outstanding amount is to be treated for enforcement purposes as if it were a fine imposed by the court.
299. Subsection (3)(b) provides that no action is to be taken to enforce a “fiscal fine” or compensation offer where acceptance has been deemed by the alleged offender’s lack of action, unless a notice is sent to the alleged offender explaining that enforcement action is to be taken, and outlining the recall procedure. Action can only be taken once any application for recall has been dealt with.