



# Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

## PART 3

### PENALTIES

#### *Penalties as alternative to prosecution*

#### **50 Fixed penalty and compensation offers**

- (1) In section 302 (fixed penalty: conditional offer by procurator fiscal) of the 1995 Act—
- (a) in subsection (2)—
    - (i) for sub-paragraph (ii) of paragraph (b) there is substituted—
      - “(ii) if the penalty is to be payable by instalments, the amount of the instalments and the intervals at which they should be paid;”
    - (ii) sub-paragraph (iii) of that paragraph and the word “and” immediately preceding it are repealed,
    - (iii) in paragraph (c), for the words “of the fixed penalty or of the first instalment thereof” there is substituted “in respect of the fixed penalty”
  - (iv) after paragraph (c) there is inserted—
    - “(ca) shall indicate—
      - (i) that the alleged offender may refuse the conditional offer by giving notice to the clerk of court in the manner specified in the conditional offer before the expiry of 28 days, or such longer period as may be specified in the conditional offer, beginning on the day on which the conditional offer is made;
      - (ii) that unless the alleged offender gives such notice, the alleged offender will be deemed

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- to have accepted the conditional offer (even where no payment is made in respect of the offer);
- (iii) that where the alleged offender is deemed as described in sub-paragraph (ii) above to have accepted the conditional offer any liability to conviction of the offence shall be discharged except where the offer is recalled under section 302C of this Act;”,
- (v) the word “and” immediately following paragraph (d) is repealed,
- (vi) for paragraph (e) there is substituted—
- “(e) shall state—
- (i) that the acceptance of the offer in the manner described in paragraph (c) above, or deemed acceptance of the offer as described in paragraph (ca)(ii) above, shall not be a conviction nor be recorded as such;
- (ii) that the fact that the offer has been accepted, or deemed to have been accepted, may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;
- (iii) that if the offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the conditional offer relates;
- (f) shall state that refusal of a conditional offer under paragraph (ca)(i) above will be treated as a request by the alleged offender to be tried for the offence; and
- (g) shall explain the right to request a recall of the fixed penalty under section 302C of this Act.”,
- (b) for subsection (4) there is substituted—
- “(4) The clerk of court shall—
- (a) without delay, notify the procurator fiscal who issued the conditional offer when a notice as described in subsection (2) (ca)(i) above has been received in respect of the offer; or
- (b) following the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the offer, notify the procurator fiscal if no such notice has been received.”,
- (c) after subsection (4) there is inserted—
- “(4A) A conditional offer is accepted by the alleged offender making any payment in respect of the appropriate fixed penalty.
- (4B) Where an alleged offender to whom a conditional offer of a fixed penalty is made does not give notice as described in subsection (2) (ca)(i) above, the alleged offender is deemed to have accepted the conditional offer.

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## (4C) Where—

- (a) an alleged offender accepts a conditional offer as described in subsection (4A) above; or
- (b) an alleged offender is deemed to have accepted a conditional offer under subsection (4B) above and the fixed penalty is not recalled,

no proceedings shall be brought against the alleged offender for the offence.”,

- (d) subsections (5) and (6) are repealed,
- (e) in subsection (7), the words from “, the amount” to the end are repealed,
- (f) after subsection (7) there is inserted—

“(7A) The amount of the maximum penalty on the scale prescribed under subsection (7) above may not exceed £300 or such higher sum as the Scottish Ministers may by order specify.”,

- (g) in subsection (8)—
  - (i) after the word “(7)” there is inserted “ or (7A) ”,
  - (ii) in paragraph (b), for the words from “be” in the second place where it occurs to the end there is substituted “ not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament ”,
- (h) after subsection (8) there is inserted—

“(8A) The alleged offender shall be presumed to have received a conditional offer under subsection (1) above if the offer is sent to—

- (a) the address given by the alleged offender in a request for recall under section 302C(1) of this Act of an earlier offer in the same matter; or
- (b) any address given by the alleged offender to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

(8B) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—

- (a) the address to which a conditional offer under subsection (1) above was sent provided it is proved that the accused received the offer; or
- (b) any address given by the accused to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.”,

- (i) in subsection (9), for the words “competently be tried before a district court” there is substituted “ be tried summarily ”.

(2) After section 302 of that Act there is inserted—

**“302A Compensation offer by procurator fiscal**

- (1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send to the alleged offender a notice under this section (referred to in this section as a compensation offer); and where he issues

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a compensation offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the offer and of its terms.

- (2) A compensation offer—
- (a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
  - (b) shall state—
    - (i) the amount of compensation payable;
    - (ii) if the compensation is to be payable by instalments, the amount of the instalments and the intervals at which they should be paid;
  - (c) shall indicate that if, within 28 days of the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender accepts the offer by making payment in respect of the offer to the clerk of court specified in the offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;
  - (d) shall indicate—
    - (i) that the alleged offender may refuse the offer by giving notice to the clerk of court in the manner specified in the offer before the expiry of 28 days, or such longer period as may be specified in the offer, beginning on the day on which the offer is made;
    - (ii) that unless the alleged offender gives such notice, the alleged offender will be deemed to have accepted the offer (even where no payment is made in respect of the offer);
    - (iii) that where the alleged offender is deemed as described in subparagraph (ii) above to have accepted the offer any liability to conviction of the offence shall be discharged except where the offer is recalled under section 302C of this Act;
  - (e) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the offer was made, or such longer period as may be specified in the offer;
  - (f) shall state—
    - (i) that the acceptance of the offer in the manner described in paragraph (c) above, or deemed acceptance of the offer as described in paragraph (d)(ii) above, shall not be a conviction nor be recorded as such;
    - (ii) that the fact that the offer has been accepted, or deemed to have been accepted, may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;
    - (iii) that if the offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the offer relates;
  - (g) shall state that refusal of an offer under paragraph (d)(i) above will be treated as a request by the alleged offender to be tried for the offence; and

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- (h) shall explain the right to request a recall of the offer under section 302C of this Act.
- (3) A compensation offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount payable in respect of the offer for all the offences in relation to which it is issued.
- (4) The clerk of court shall—
  - (a) without delay, notify the procurator fiscal who issued the compensation offer when a notice as described in subsection (2)(d)(i) above has been received in respect of the offer; or
  - (b) following the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the offer, notify the procurator fiscal if no such notice has been received.
- (5) A compensation offer is accepted by the alleged offender making any payment in respect of the offer.
- (6) Where an alleged offender to whom a compensation offer is made does not give notice as described in subsection (2)(d)(i) above, the alleged offender is deemed to have accepted the offer.
- (7) Where—
  - (a) an alleged offender accepts a compensation offer as described in subsection (5) above; or
  - (b) an alleged offender is deemed to have accepted a compensation offer under subsection (6) above and the offer is not recalled,no proceedings shall be brought against the alleged offender for the offence.
- (8) The Scottish Ministers shall by order prescribe the maximum amount of a compensation offer; but that amount shall not exceed level 5 on the standard scale.
- (9) An order under subsection (8) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (10) The alleged offender shall be presumed to have received a compensation offer under subsection (1) above if the offer is sent to—
  - (a) the address given by the alleged offender in a request for recall under section 302C(1) of this Act of an earlier offer in the same matter; or
  - (b) any address given by the alleged offender to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.
- (11) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—
  - (a) the address to which a compensation offer under subsection (1) above was sent provided it is proved that the accused received the offer; or
  - (b) any address given by the accused to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

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- (12) The clerk of court shall account for the amount paid under a compensation offer to the person entitled thereto.
- (13) In this section, a “relevant offence” means any offence—
- (a) in respect of which an alleged offender could be tried summarily; and
  - (b) on conviction of which it would be competent for the court to make a compensation order under section 249 of this Act.

### **302B Combined fixed penalty and compensation offer**

- (1) The procurator fiscal may send to an alleged offender a notice under sections 302(1) and 302A(1) of this Act in respect of the same relevant offence (referred to in this section as a “combined offer”).
- (2) A combined offer shall be contained in the one notice.
- (3) In addition to the information required to be provided under sections 302(2) and 302A(2) of this Act, the combined offer shall state—
- (a) that the combined offer consists of both a fixed penalty offer and a compensation offer;
  - (b) the whole amount of the combined offer; and
  - (c) that liability to conviction of the offence shall not be discharged unless the whole of the combined offer is accepted.
- (4) Any acceptance or deemed acceptance of part of a combined offer shall be treated as applying to the whole of the offer.

### **302C Recall of fixed penalty or compensation offer**

- (1) Where an alleged offender is deemed to have accepted—
- (a) a fixed penalty offer by virtue of section 302(2)(ca)(ii) of this Act; or
  - (b) a compensation offer by virtue of section 302A(2)(d)(ii) of this Act,
- the alleged offender may request that it be recalled.
- (2) A request for recall under subsection (1) above is valid only if—
- (a) the alleged offender claims that he—
    - (i) did not receive the offer concerned; and
    - (ii) would (if he had received it) have refused the offer; or
  - (b) the alleged offender claims that—
    - (i) although he received the offer concerned, it was not practicable by reason of exceptional circumstances for him to give notice of refusal of the offer; and
    - (ii) he would (but for those circumstances) have refused the offer.
- (3) A request for recall of a fixed penalty offer or a compensation offer requires to be made—
- (a) to the clerk of court referred to in the offer; and
  - (b) no later than 7 days after the expiry of the period specified in the offer for payment of the fixed penalty or compensation offer or, where a notice is sent in pursuance of section 303(1A)(a) of this Act, no later than 7 days after it is sent.

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- (4) The clerk of court may, on cause shown by reference to subsection (2) above, consider a request for recall of such an offer despite its being made outwith the time limit applying by virtue of subsection (3)(b) above.
  - (5) The clerk of court may, following receipt of such a request—
    - (a) uphold the fixed penalty offer or compensation offer; or
    - (b) recall it.
  - (6) The alleged offender may, within 7 days of a decision under subsection (5)
    - (a) above, apply to the court specified in the offer for a review of the decision (including as it involves a question which arose by reference to subsections (2) to (4) above).
  - (7) In a review under subsection (6) above, the court may—
    - (a) confirm or quash the decision of the clerk;
    - (b) in either case, give such direction to the clerk as the court considers appropriate.
  - (8) The decision of the court in a review under subsection (6) above shall be final.
  - (9) The clerk of court shall, without delay, notify the procurator fiscal of—
    - (a) a request for recall under subsection (1) above;
    - (b) an application for review under subsection (6) above;
    - (c) any decision under subsection (5) or (7) above.
  - (10) For the purposes of this section, a certificate given by the procurator fiscal as to the date on which a fixed penalty offer or compensation order was sent shall be sufficient evidence of that fact.”.
- (3) In section 303 (fixed penalty: enforcement) of that Act—
- (a) for subsection (1) there is substituted—

“(1) Subject to subsections (1A) and (2) below, where an alleged offender accepts a fixed penalty offer under section 302 of this Act or a compensation offer under section 302A of this Act, any amount of it which is outstanding at any time shall be treated as if the penalty or offer were a fine imposed by the court (the clerk of which is specified in the notice).”
  - (b) after subsection (1) there is inserted—

“(1A) No action shall be taken to enforce a fixed penalty or compensation offer which an alleged offender is deemed to have accepted by virtue of section 302(2)(ca)(ii) or section 302A(2)(d)(ii) of this Act unless—

    - (a) the alleged offender is sent a notice—
      - (i) of the intention to take enforcement action; and
      - (ii) which explains the right to request a recall of the penalty or offer under section 302C of this Act;
    - (b) any request for recall made under that section has been finally disposed of.”
  - (c) in subsection (2), for the word “penalty” there is substituted “ fixed penalty or compensation offer ”,
  - (d) in subsection (3), after the word “penalty” there is inserted “ or compensation offer ”.

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### Commencement Information

- II** S. 50 wholly in force at 10.3.2008, see s. 84 and [S.S.I. 2008/42](#). {art. 3}, Sch. (subject to savings in art. 6)



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