

## **EXECUTIVE NOTE**

### **THE CRIMINAL PROCEDURE (SCOTLAND) (ACT) 1995 COMPENSATION OFFER (MAXIMUM AMOUNT) ORDER 2008 SSI/2008/7**

1. The above Order was made in exercise of the powers conferred by section 302A(8) of Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), which provides that the Scottish Ministers may, by order, prescribe the maximum amount of a compensation offer, not exceeding level 5 on the standard scale (currently £5000). The Order is subject to negative parliamentary procedure under section 302A(9) of the 1995 Act.

2. The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”) received Royal Assent on 22 February 2007. Section 50(2) of the 2007 Act inserts section 302A into the 1995 Act and will be brought into force on 10 March 2008. This Order is therefore being made using an anticipatory exercise of power as provided for in terms of paragraph 10 of the schedule to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SSI 1999/1379). This is to give full effect to the provisions of section 50 of the 2007 Act, in relation to compensation offers by procurators fiscal, upon entry into force on 10 March 2008. This Order is part of a series of Instruments being made to implement the 2007 Act. Those instruments are part of the 3<sup>rd</sup> phase of implementation of the Act scheduled for 10 March.

#### **Background and Policy Objectives**

3. A procurator fiscal is permitted, under section 302A of the 1995 Act, to send to an alleged offender a compensation offer in respect of any offence which could competently be tried summarily and where, on conviction, the court could impose a compensation order under section 249 of the 1995 Act. In accordance with section 302A(8), as inserted by section 50(2) of the 2007 Act, article 2 provides that the maximum amount of a compensation offer is £5,000.

4. Many cases which are otherwise suitable for the offer of an alternative to prosecution are prosecuted in court because of the possibility of a compensation order being made by the court. Compensation offers are introduced by section 50 of the 2007 Act as part of the new package of direct measures (alternatives to prosecution) intended to strengthen the options available to prosecutors to deal with appropriate cases out of court. Acceptance of a compensation offer is not recorded as a conviction; however, it may be disclosed to a court if the court is sentencing an offender for an offence committed within 2 years of acceptance of the offer. If an offer is rejected the procurator fiscal may prosecute the alleged offender. A compensation offer can be offered instead of or in combination with a fixed penalty offer, and will operate in a similar way. However, on payment, the amount would be remitted to the victim of the offence, in the same way as a court-imposed compensation order.

5. The introduction of compensation offers will help improve the efficiency and effectiveness of the summary justice system by affording procurators fiscal greater flexibility in determining the most appropriate and effective disposal of an alleged offence.

6. Article 2 of the Order prescribes that the maximum level of a fiscal compensation offer is £5,000. This will give prosecutors the greatest flexibility in applying the appropriate penalty in each case.

### **Consultation**

7. Many of the provisions of the 2007 Act are based on the recommendations of the 'McInnes Committee' and subsequent consultation during 2004. The Scottish Executive published *Smarter Justice, Safer Communities – Summary Justice Reform Next Steps*<sup>1</sup>, in March 2005 following extensive consultation on the recommendations of the report<sup>2</sup> of the Committee chaired by Sheriff Principal John McInnes. Details of the history of the Act, including the McInnes report, and the *Smarter Justice* paper are all available through the Scottish Government's summary justice reform website.<sup>3</sup>

8. Most respondents to the consultation following the McInnes report who commented on this proposal were in favour of the introduction of a fiscal compensation offer, subject to an upper limit being set. On that basis, the 2007 Act included provision that the maximum amount of a compensation offer not exceed level 5 on the standard scale (currently £5,000).

### **Financial Effects**

9. The Order is made in accordance with the original policy intention of the relevant provisions of the 2007 Act, and therefore has no financial effects beyond those detailed in the Financial Memorandum to the Bill.

Gerard Bonnar  
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<sup>1</sup> Scottish Executive, *Smarter Justice, Safer Communities: Summary Justice Reform - Next Steps*, available at: <http://www.scotland.gov.uk/Publications/2005/03/20888/55016>

<sup>2</sup> Scottish Executive, *Report of the Summary Justice Review Committee*, available at: <http://www.scotland.gov.uk/Publications/2004/03/19042/34176>

<sup>3</sup> The summary justice reform website can be found at: <http://www.scotland.gov.uk/Topics/Justice/criminal/criminalprocedure/19008>