



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART II

MISCELLANEOUS

Conditional offer by procurator fiscal

56 Conditional offer of fixed penalty 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 conditional offer); and where he issues a conditional offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the conditional offer and of its terms.
- (2) In this section “a relevant offence” means any offence in respect of which an alleged offender could competently be tried before a district court, but shall not include a fixed penalty offence within the meaning of section 27(5) as extended by [F¹section 51 of the Road Traffic Offenders Act 1988 nor any other offence in respect of which a conditional offer within the meaning of sections 75 to 77 of that Act may be sent.]
- (3) A conditional 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 the fixed penalty for that offence;
 - (ii) the amount of the instalments by which the penalty may be paid; and
 - (iii) the intervals at which such instalments should be paid;
 - (c) shall indicate that if, within twenty-eight days of the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer, the alleged offender accepts the offer by making payment of the fixed penalty or of the first instalment thereof to the clerk of court

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- specified in the conditional offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;
- (d) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of twenty-eight days from the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer; and
- (e) shall state that acceptance of the offer in the manner described in paragraph (c) above by the alleged offender shall not be a conviction nor be recorded as such.
- (4) Where payment of the fixed penalty or of the first instalment has not been made to the clerk of court, he shall, upon the expiry of the period of twenty-eight days referred to in subsection (3)(c) above or such longer period as may be specified in the conditional offer, notify the procurator fiscal who issued the conditional offer that no payment has been made.
- (5) Proceedings shall not be brought against any person for the offence to which a conditional offer relates until the procurator fiscal receives notification from the clerk of court in accordance with subsection (4) above.
- (6) Where an alleged offender makes payment of the fixed penalty or of the first instalment to the clerk of court specified in the conditional offer no proceedings shall be brought against the alleged offender for the offence.
- (7) The fixed penalty under this section shall be such sum, not exceeding level 1 on the standard scale, as the Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament determine; and an order under this subsection may contain provision as to the payment of the fixed penalty by instalments.
- (8) Subject to subsection (9) below, where an alleged offender accepts a conditional offer by paying the first instalment of the fixed penalty, any amount of the penalty which is outstanding at any time shall be treated as if the penalty were a fine imposed by the court, the clerk of which is specified in the conditional offer.—
- (9) In the enforcement of a penalty which is to be treated as a fine in pursuance of subsection (8) above—
- (a) any reference (howsoever expressed) in any enactment (whether passed or made before or after the coming into force of this section) to—
- (i) the imposition of imprisonment or detention in default of payment of a fine shall be construed as a reference to enforcement by means of civil diligence;
 - (ii) the finding or order of the court imposing the fine shall be construed as a reference to a certificate given in pursuance of subsection (10) below;
 - (iii) the offender shall be construed as a reference to the alleged offender;
 - (iv) the conviction of the offender shall be construed as a reference to the acceptance of the conditional offer by the alleged offender;
- (b) the following enactments shall not apply—
- (i) in the 1975 Act—
 - section 395(1);
 - section 395A(2);
 - section 396(1) to (6);

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section 403(6);
section 406;
section 407, except subsection (1)(b);
sections 408 and 409;
section 411(3); and

(ii) in the ^{M1}Criminal Justice (Scotland) Act 1980, section 52.

- (10) For the purposes of any proceedings in connection with, or steps taken for, the enforcement of any amount of a fixed penalty which is outstanding, a document purporting to be a certificate signed by the clerk of court for the time being responsible for the collection or enforcement of the penalty as to any matter relating to the penalty shall be conclusive of the matter so certified.
- (11) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary for the enforcement in England and Wales or Northern Ireland of any penalty (treated, in pursuance of subsection (8) above, as a fine). which is transferred as a fine to a court in England and Wales or, as the case may be, Northern Ireland.

Textual Amendments

F1 Words substituted by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), s. 4, [Sch. 3 para. 34](#)

Marginal Citations

M1 1980 c. 62.

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