



Road Traffic Offenders Act 1988

1988 CHAPTER 53

PART III

FIXED PENALTIES

Conditional offer of fixed penalty in Scotland

75 Conditional offer by procurator fiscal

- (1) This section and sections 76 and 77 apply only in relation to offences committed in Scotland.
- (2) Where—
 - (a) a procurator fiscal receives a report that a fixed penalty offence has been committed, and
 - (b) no fixed penalty notice in respect of the offence has been given under section 54 of this Act or fixed to a vehicle under section 62 of this Act,he may send a notice under this section to the alleged offender.
- (3) Where a procurator fiscal receives a report that—
 - (a) an offence under an enactment specified in column 1 of Schedule 5 to this Act has been committed, or
 - (b) an offence under an enactment specified in column 1 of Schedule 3 to this Act has been committed by causing or permitting a vehicle to be used by another person in contravention of any provision made or prohibition imposed by or under any enactment, or
 - (c) an offence of aiding, abetting, counselling, procuring or inciting the commission of—
 - (i) a fixed penalty offence, or
 - (ii) an offence referred to in this subsection,has been committed,he may send a notice under this section to the alleged offender.

- (4) A notice under this section is referred to in this section and sections 76 and 77 as a “conditional offer”.
- (5) Where the procurator fiscal issues a conditional offer, he must notify the clerk of court specified in it of its issue and its terms.
- (6) A conditional offer must—
- (a) 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) state the amount of the fixed penalty for that offence, and
 - (c) state that proceedings against the alleged offender cannot be commenced in respect of that offence until the end of the 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.
- (7) A conditional offer must indicate that if the following conditions are fulfilled, that is—
- (a) within the period of twenty-eight days from the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender—
 - (i) makes payment of the fixed penalty to the clerk of court specified in the offer, and
 - (ii) where the offence to which the offer relates is an offence involving obligatory endorsement, at the same time delivers his licence to that clerk, and
 - (b) where his licence is so delivered, that clerk is satisfied on inspecting the licence that, if the alleged offender were convicted of the offence, he would not be liable to be disqualified under section 35 of this Act,
- any liability to conviction of the offence shall be discharged.
- (8) The Secretary of State may by order provide for offences to become or (as the case may be) to cease to be offences in respect of which a conditional offer may be sent under subsection (3)(a) above, and may make such modifications of the provisions of this Part of this Act as appear to him to be necessary for the purpose.
- (9) An offence committed by aiding, abetting, counselling, procuring or inciting the commission of an offence which is an offence involving obligatory endorsement is itself an offence involving obligatory endorsement for the purposes of this Part of this Act.

76 Effect of offer and payment of penalty

- (1) This section applies where a conditional offer has been sent to a person under section 75 of this Act.
- (2) No proceedings shall be brought against any person for the offence to which the conditional offer relates until the procurator fiscal receives notification in accordance with subsection (5) or (6) below.
- (3) Payment of the fixed penalty in pursuance of the conditional offer must be made to such clerk of court as may be specified in the offer.

- (4) Where the alleged offender makes payment of the fixed penalty in accordance with subsection (3) above, no proceedings shall be brought against him for the offence to which the offer relates.
- (5) Where—
- (a) the alleged offender tenders payment in accordance with subsection (3) above and delivers his licence to the clerk of court specified in the conditional offer, but
 - (b) it appears to the clerk of court, on inspecting the licence, that he would be liable to be disqualified under section 35 of this Act if he were convicted of the offence to which the conditional offer relates,
- the clerk of court must—
- (i) return the licence to the alleged offender together with the payment, and
 - (ii) notify the procurator fiscal who issued the conditional offer that he has complied with the preceding provisions of this subsection.
- (6) Where, on the expiry of the period of twenty-eight days from the date on which the conditional offer was made or such longer period as may be specified in the offer, the conditions specified in the offer in accordance with section 75(7)(a) of this Act have not been fulfilled, the clerk of court must notify the procurator fiscal accordingly.
- (7) In any proceedings a certificate that by a date specified in the certificate payment of a fixed penalty was or was not received by the clerk of court specified in the conditional offer shall, if the certificate purports to be signed by that clerk, be sufficient evidence of the facts stated.

77 Endorsement where penalty paid

- (1) Where—
- (a) in pursuance of a conditional offer a person (referred to in this section as the “licence holder”) makes payment of the fixed penalty to the clerk of court specified in the offer and delivers his licence to the clerk, and
 - (b) the clerk is not required by subsection (5) of section 76 of this Act to return the licence to him and did not, before the payment was tendered, notify the procurator fiscal under subsection (6) of that section,
- the clerk must thereupon endorse the relevant particulars on the licence and return it to the licence holder.
- (2) Where it appears to a clerk of court that there is an error in an endorsement made by virtue of this section on a licence he may amend the endorsement so as to correct the error; and the amended endorsement shall have effect and shall be treated for all purposes as if it had been correctly made on receipt of the fixed penalty.
- (3) Subject to subsection (4) below, where a cheque tendered in payment is subsequently dishonoured—
- (a) any endorsement made by a clerk of court under subsection (1) above remains effective, notwithstanding that the licence holder is still liable to prosecution in respect of the alleged offence to which the endorsement relates, and
 - (b) the clerk of court must, upon the expiry of the period specified in the conditional offer or, if the period has expired, forthwith notify the procurator fiscal who made the offer that no payment has been made.

Status: This is the original version (as it was originally enacted).

- (4) When proceedings are brought against a licence holder after the procurator fiscal has been notified in pursuance of subsection (3)(b) above, the court—
- (a) must order the removal of the fixed penalty endorsement from the licence, and
 - (b) may, on finding the licence holder guilty, make any competent order of endorsement or disqualification and pass any competent sentence.
- (5) The reference in subsection (1) above to the relevant particulars is to—
- (a) particulars of the offence, including the date when it was committed, and
 - (b) the number of penalty points to be attributed to the offence.
- (6) The clerk of court must send notice to the Secretary of State—
- (a) of any endorsement under subsection (1) above and of the particulars endorsed,
 - (b) of any amendment under subsection (2) above, and
 - (c) of any order under subsection (4)(a) above.
- (7) Where a person's licence is endorsed under this section he shall be treated for the purposes of sections 13(4), 28, 29 and 45 of this Act and of the Rehabilitation of Offenders Act 1974 as if—
- (a) he had been convicted of the offence,
 - (b) the endorsement had been made in pursuance of an order made on his conviction by a court under section 44 of this Act, and
 - (c) the particulars of the offence endorsed by virtue of subsection (5)(a) above were particulars of his conviction of that offence.
- (8) In relation to any endorsement of a person's licence under this section—
- (a) the reference in section 45(4) of this Act to the order for endorsement, and
 - (b) the references in section 13(4) of this Act to any order made on a person's conviction,
- are to be read as references to the endorsement itself.