

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

EXPLANATORY NOTES

INTRODUCTION

Part 3 – Penalties

Penalties as alternative to prosecution

Section 51: Work orders

New section 303ZA – Work orders

300. This section inserts a new section 303ZA into the 1995 Act. It creates a new alternative to prosecution – the “work order” (which has also been referred to as the “fine on time” or “community fiscal fine”).
301. Section 303ZA(1) empowers a procurator fiscal to make a ‘work offer’ to an alleged offender who appears to have committed a relevant offence (defined in section 303ZA(16) as one which is triable summarily). This offer will give the alleged offender the option of performing a period of unpaid work where a monetary penalty such as a “fiscal fine” or a compensation offer are not deemed appropriate.
302. Section 303ZA(2) sets the minimum (10 hours) and maximum (50 hours) number of hours work that can be offered under a work offer. Section 303ZA(3) outlines the information which will require to be contained on the notice of offer. In many ways this is similar to the information which requires to be on the notice of offer of the two other alternatives to prosecution which are described above. The circumstances of the alleged offence, the amount of work which will require to be completed, the date by which the work will require to be completed, and the consequences of acceptance and completion of the offer all require to be in the offer.
303. Section 303ZA(4) permits the work offer to be made in respect of more than one offence, and subsection (5) provides details on what the alleged offender requires to do to accept the offer. Unlike the new system for “fiscal fines” and compensation offers, the work offer requires to be positively accepted by the alleged offender.
304. Section 303ZA(6) provides that if the offer is accepted, the procurator fiscal can then make a work order against the alleged offender. On doing so, the procurator fiscal must send a notice to the alleged offender that a work order has been made, containing details of the amount of work to be carried out and details of the person who is to supervise performance of the order (section 303ZA(7)). Section 303ZA(8) obliges the procurator fiscal to advise the supervising local authority of the imposition of an order.
305. Section 303ZA(9), (10) and (11) deal with the manner in which the supervising officer’s duties are to be discharged. The officer is to determine the nature, time and place of the work to be done, and give directions to the alleged offender regarding its performance. The officer is also to provide the procurator fiscal with details of the performance of

*These notes relate to the Criminal Proceedings etc. (Reform) (Scotland)
Act 2007 (asp 6) which received Royal Assent on 22 February 2007*

the order. The purpose of this last provision is to allow the procurator fiscal to consider whether, in the event that the order is not completed satisfactorily, further action is appropriate. The officer is under a duty, as far as practicable, not to direct the alleged offender to carry out work which would hamper the alleged offender's attendance at work or education, or which would conflict with the alleged offender's religious beliefs.

306. Section 303ZA(12) provides that where the alleged offender completes the work required in the order s/he will not face prosecution for the alleged offence. In the event that the entire order is not completed satisfactorily, the procurator fiscal will have the option of prosecuting the alleged offender for the alleged offence giving rise to the work order, even if some work has been carried out under the order.
307. Section 303ZA(13) and (14) give the Scottish Ministers a regulation-making power to make specific provision in relation to specific aspects of work orders as set out in subsection (9). In particular the Scottish Ministers may specify what kind of work may or may not be undertaken.
308. Section 303ZA(15) makes provision for citation of the alleged offender in subsequent prosecution. The position is similar to that for "fiscal fines" and compensation offers. Citation will be presumed to have taken place if it is effected at the address at which the alleged offender is proved to have received an offer, or any other address provided by the alleged offender.