

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

EXPLANATORY NOTES

INTRODUCTION

Part 3 – Penalties

Sentencing powers

Section 43: Common law offences

249. This section amends section 5(2)(d) of the 1995 Act by increasing the maximum sentence of imprisonment which can be imposed by a sheriff for a common law offence in a summary case from 3 months to 12 months. At present, section 5(3) of the 1995 Act provides that the maximum sentence of imprisonment for a second or subsequent offence involving violence or dishonesty is 6 months. This provision is repealed meaning that, in future, all common law offences will be punishable with a maximum custodial sentence of 12 months on summary conviction. The sentencing powers of the district court are unaffected.

Section 44: Particular statutory offences

250. This section increases the maximum prison sentence for certain statutory offences. These offences attract a maximum sentence in excess of the present common law maximum, but below the proposed new common law maximum of 12 months. They are triable summarily only, so the penalties would not be altered by the provisions of section 45 of this Act. Subsection (1) increases the maximum prison sentence for offences under section 41 of the Police (Scotland) Act 1967 from 9 to 12 months, and amends that Act accordingly. That section covers assaulting or otherwise impeding police officers in the course of their duty.

251. Subsection (2) extends existing powers to impose maximum custodial sentences of 6 months on summary conviction for offences related to the transposition of Council Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”). Section 26A of the Wildlife and Countryside Act 1981 (“the 1981 Act”) currently provides that regulations made under section 2(2) of the European Communities Act, which give effect to the Habitats Directive, may provide for a maximum prison sentence on summary conviction of 6 months. Such regulations would otherwise only be able to impose a maximum sentence of 3 months.

252. However, the power under section 26A of the 1981 Act refers only to the Directive as it was then amended by the Act of Accession to the European Union of Austria, Finland and Sweden and by Council Directive 97/62. That reference to the Directive does not take account of a subsequent amendment to the Habitats Directive (by the Act of Accession of the Czech Republic etc in 2003). The effect of this is that section 26A of the 1981 Act does not enable the imposition of maximum 6 month custodial sentences in relation to offences related to that later amendment of the Habitats Directive. Subsection

(2) ensures that the 6 month maximum can apply in respect of all offences related to the Habitats Directive and that, in the event of any future amendment of the Directive, section 26A of the 1981 Act will continue to apply to the Directive as amended.

253. Subsection (3) increases the maximum sentence under section 37 of the Antisocial Behaviour (Scotland) Act 2004 to 12 months or a fine not exceeding the prescribed sum or both and abolishes the distinction in the maximum penalty between a first offence and a second or subsequent offence. Section 37 contains offences relating to premises which are subject to a closure order.
254. Subsection (4) increases the maximum sentence under the Emergency Workers (Scotland) Act 2005, section 6, from 9 to 12 months or a fine not exceeding the prescribed sum or both. That section covers the offences created by that Act of assaulting or impeding emergency or health workers in the course of their duty.
255. Subsection (5) increases the maximum prison sentence under section 39 of the Fire (Scotland) Act 2005 from 9 to 12 months or a fine not exceeding level 4 on the standard scale or both. That section covers assaulting or impeding those performing certain functions under that Act.

Section 45: Other statutory offences

256. This section brings the maximum summary prison sentences for certain statutory offences into line with the new maximum sentence for common law offences set out in section 43 of the Act.
257. Subsection (1), read with subsections (6), (7) and (8) set out the new maximum, and define the penalty provisions that will be altered. Offences which will be affected are those which can be tried under either solemn or summary procedure (sometimes referred to as “triable either way”) and attract maximum prison sentences of less than 12 months on summary conviction. The new maximum summary penalty for such offences will be 12 months.
258. The effect of subsection (2) is that the statutes which create the affected offences are to be read subject to the amended summary sentencing limit.
259. Subsection (3) allows the Scottish Ministers to amend the maximum period of imprisonment specified in the statutory offences to which subsections (1) and (2) apply. This means that, in due course, textual amendment of the relevant statutes can take place, avoiding ongoing reliance on the general amendment. Subsection (4) provides that the maximum period of imprisonment provided for in a relevant power is to be read as a period of 12 months. Subsection (5) allows the Scottish Ministers to amend certain provisions in enactments that contain powers to create offences. Where an enactment provides for the creation of offences punishable on both solemn and summary conviction, the maximum summary penalty may, by order, be increased to 12 months.

Section 46: JP court: power to increase penalties

260. This section gives powers to the Scottish Ministers to amend the maximum penalties available to the JP court. Ministers will be able to make similar changes which would apply to any remaining district courts by virtue of section 64(5) of the Act.
261. Subsection (1) empowers Ministers to amend, by order, the maximum period of imprisonment, fine, or amount of caution available to JP courts for either common law offences or statutory offences, as specified in section 7(6) or (7) of the 1995 Act.
262. Subsection (2) empowers Ministers to amend the maximum penalty available to JP courts in respect of an offence set out in another statute.

263. Subsection (3) caps these powers. The effect of subsection (3) is that an order could empower the JP court to impose imprisonment for up to 6 months (but could also increase the limit to a period that is higher than the current maximum of 60 days but lower than 6 months).

Section 47: Fine Level

264. This section provides that the maximum level of fine that may be imposed on summary conviction in respect of a statutory “triable either way offence” where the maximum penalty on summary conviction is currently expressed by reference to ‘level 5 on the standard scale’ is to be £10,000 in future.
265. Subsection (1) (read with the definitions provided in subsections (6), (7) and (8)), provides that the maximum fine that may be imposed on a person following summary conviction of a “triable either way” offence for which the current maximum is referred to as level 5 on the standard scale shall be the statutory maximum.
266. The effect of subsection (2) is that the statutes which create the affected offences are to be read subject to the amended maximum financial penalty (the reference to “level 5” as the maximum fine imposable on summary conviction in a “triable either way” offence is to be read as a reference to “the statutory maximum” by virtue of this provision).
267. Subsection (3) allows the Scottish Ministers, by order, to amend the maximum level of fine specified in the statutory offences to which subsections (1) and (2) apply. This means that, in due course, textual amendment of the relevant statutes can take place, avoiding ongoing reliance on the general amendment.
268. The effect of subsection (4) is that any reference in a ‘relevant power’ which expresses the maximum level of fine that may be imposed on summary conviction for a “triable either way” offence as level 5 on the standard scale is to be read as a reference to the statutory maximum. ‘Relevant power’ is defined in subsection (7).
269. Subsection (5) allows the Scottish Ministers, by order, to amend the specification of the maximum fine level in a relevant power so as to increase the maximum to the statutory maximum. This means that, in due course, textual amendment of relevant powers can take place, ensuring that those powers make clear the level of penalty that may be set in any offence created under them, avoiding ongoing reliance on the general amendment.
270. Subsections (6) to (8) provide definitions for the purposes of subsections (1) to (5).

Section 48: Prescribed sum

271. This section increases the prescribed sum from £5,000 to £10,000. The prescribed sum is the maximum amount the sheriff may impose for a common law offence and certain statutory offences under summary procedure.

Section 49: Compensation orders

272. This section amends section 249 of the 1995 Act. That section prescribes and limits the circumstances in which a court can impose a compensation order on an offender. The purpose of the amendment is to extend the power of the court to impose compensation orders.
273. This section is also relevant to the operation of the new alternative to prosecution introduced in section 50 of this Act – the compensation offer – as prosecutors are empowered to issue compensation offers in circumstances where a court could, on conviction, impose a compensation order.
274. The introduction of section 249(1)(b) of the 1995 Act permits compensation to be ordered by a court, or offered by a prosecutor, in circumstances where alarm or distress have been caused directly by the actions complained of. Currently, section 249(1) limits

compensation orders to circumstances where personal injury, loss or damage is caused either directly or indirectly.

Penalties as alternative to prosecution

Section 50: Fixed penalty and compensation offers

275. This section provides considerable changes in procedures relating to existing alternatives to prosecution, and introduces a new alternative to prosecution, to be known as the compensation offer. It makes significant amendments to sections 302 and 303 of the 1995 Act, and introduces a number of new sections to that Act. Sections 302 and 303 deal with conditional offers of a fixed penalty by prosecutors (generally known as “fiscal fines”).

Conditional offers – changes to procedures etc

276. Subsection (1)(a) amends section 302(2) of the 1995 Act, which covers the information which requires to be provided to the alleged offender in a conditional offer. The amendments take account of the revised procedure introduced by this Act. It is also made clear that an offer letter can stipulate that the whole penalty is to be paid in a single instalment.

277. Subsection (1)(c) inserts subsections (4A) - (4C) into section 302 of the 1995 Act. This effects a change to the way in which fixed penalties are administered. Acceptance of a conditional offer of a fixed penalty will now be either by making any payment in respect of the offer, or by taking no action in respect of the offer. Currently, an offer of a fixed penalty requires the suspected offender to take positive steps to accept it. The terms of these new subsections render subsections (5) and (6) of section 302 redundant, and these are repealed by subsection (1)(d) of this section.

278. Subsection (1)(b) makes a consequential amendment to section 302(4) of the 1995 Act, to oblige the clerk of court to notify the procurator fiscal whether or not the conditional offer has been rejected.

279. Subsections (1)(e), (f) and (g) amend the maximum level of a conditional offer from level 1 on the standard scale (presently £200) to £300. The Scottish Ministers are given power to further increase the maximum by order, subject to affirmative procedure.

280. Subsection (1)(h) inserts new subsections (8A) and (8B) into section 302 of the 1995 Act. Subsection (8A) raises a rebuttable presumption that the alleged offender has received a conditional offer if it is sent to: the address given by the alleged offender in relation to a recall application under section 302C(1) (see paragraphs 291 to 296 below); or to any address which the alleged offender has given to the clerk of court or the procurator fiscal in respect of that offer. Subsection (8B), in turn, raises a presumption in relation to the operation of section 141(4) of the 1995 Act, which covers the citation of accused persons to court. It provides that citation of the accused will be presumed to have been successfully effected if sent to the same address at which it can be proved the accused received a conditional offer, or at another address given by the accused in connection with that offer.

281. Subsection (1)(i) amends section 302(9) of the 1995 Act. It extends the range of offences for which conditional offers can be made. At present a conditional offer can be made in respect of any offence which can be tried in the district court. Subject to the exclusion of certain road traffic offences set out in section 302(9) of the 1995 Act, it will now be competent to make a conditional offer in relation to any offence which can be tried summarily.

New section 302A - compensation offer

282. [Section 50\(2\)](#) introduces three new sections into the 1995 Act (sections 302A to 302C). The first of these sections, 302A, creates compensation offers by the procurator fiscal and provides a mechanism for their operation. Many of the procedures are identical to, or similar to, those made for the operation of the new system which will apply to conditional offers of a fixed penalty.
283. A procurator fiscal is permitted by section 302A(1) to send a compensation offer to an alleged offender where it seems that a relevant offence has been committed. A relevant offence is defined in section 302A(13) as an offence which can be tried summarily, and for which a court could competently make a compensation order (section 49 and paragraphs 272 to 274 above refer). The offer document is required by section 302A(2) to give the accused similar information to that given in a conditional offer of a “fiscal fine”. This includes provision that the prosecutor can stipulate that payment of the whole amount is to be made in one instalment.
284. Section 302A(3) provides that a compensation offer can be made in respect of more than one relevant offence. Section 302A(4) obliges the clerk of court to advise the procurator fiscal whether notice has been given that the offer has been rejected. Sections 302A(5) and (6) provide that acceptance of an offer is deemed either if payment is made to the offer, or if the alleged offender takes no action to expressly reject it.
285. Section 302A(7) provides that if a compensation offer is accepted no prosecution can take place, and no conviction will be recorded.
286. Section 302A(8) and (9) provide that the maximum amount of a compensation offer is to be set by the Scottish Ministers, but that it is not to exceed level 5 on the standard scale (presently £5000).
287. Sections 302A(10) and 302A(11) make provision for presumption of service of further compensation offers and in respect of citations served in terms of section 141(4) of the 1995 Act. These are the same as those described at paragraph 280 above.

New section 302B – combined fixed penalty and compensation offer

288. Section 302B makes provision to allow prosecutors to make a conditional offer combining elements of both a fine and compensation. Any such offer will be regarded as a “combined offer”.
289. Section 302B(3) sets out the additional information which requires to be provided in a combined offer, which in terms of section 302B(2) requires to be in a single notice.
290. Section 302B(4) provides that acceptance of part of any such offer will be regarded as applying to the whole offer. This guards against the possibility that, faced with two separate offers of a fine and compensation for the same incident, the alleged offender will accept one and reject the other.

New section 302C – recall of fixed penalty or compensation offer

291. Section 302C provides a mechanism for recalling a “fiscal fine” offer or compensation offer. Section 302C(1) provides that the alleged offender can make a request for recall where s/he has taken no action in respect of the offer and it is deemed to have been accepted.
292. Section 302C(2) provides that recall of deemed acceptance can be sought where the alleged offender claims that s/he did not receive the offer; or where the offer was received but the alleged offender claims that it was not practicable because of exceptional circumstances for notice of refusal of the offer to be given. In both cases the alleged offender must also claim that the offer would have been refused.

293. Section 302C(3) provides that where the alleged offender wishes to apply to have the deemed acceptance recalled, s/he must apply to the clerk of court within certain time limits. However, section 302C(4) permits the clerk to consider a request for recall outwith those time limits on cause shown. In terms of section 302C(5), on receipt of an application for recall the clerk of court may either uphold or recall the offer.
294. Section 302C(6) gives the alleged offender the right to apply to the court which is specified in the offer for review of the clerk of court's decision, and section 302C(7) gives the court power, in turn, to confirm or quash the clerk's decision. Section 302C(8) provides that the court's decision is final.
295. The clerk of court is obliged by section 302C(9) to inform the procurator fiscal of a request for recall, an application for review of the clerk's decision, and any decision taken either by the clerk or the court in connection with the application.
296. Section 302C(10) provides that for the purposes of considering an application for recall the procurator fiscal can certify when the offer was sent.

Further provisions on enforcement

297. [Section 50\(3\)](#) makes further provision in relation to enforcement of alternatives to prosecution, and amends section 303 of the 1995 Act accordingly.
298. Subsection (3)(a) provides that, where an alternative to prosecution has been accepted, any outstanding amount is to be treated for enforcement purposes as if it were a fine imposed by the court.
299. Subsection (3)(b) provides that no action is to be taken to enforce a "fiscal fine" or compensation offer where acceptance has been deemed by the alleged offender's lack of action, unless a notice is sent to the alleged offender explaining that enforcement action is to be taken, and outlining the recall procedure. Action can only be taken once any application for recall has been dealt with.

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 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.

Section 52: Setting aside of offers and orders

New section 303ZB – Setting aside of offers and orders

309. This section inserts section 303ZB into the 1995 Act. It formalises the power of the procurator fiscal to set aside an offer of an alternative to prosecution of the types listed in section 303ZB(1).
310. Section 303ZB(2) provides that the procurator fiscal can set aside an offer of such an alternative to prosecution where s/he is satisfied that the offer should have not been made, on the basis of information which comes to his/her attention after the making of the offer.
311. Section 303ZB(3) confirms that this power applies even if the offer has been accepted or deemed to have been accepted.
312. Section 303ZB(4) obliges the procurator fiscal when exercising this power to advise the alleged offender that the offer has been set aside and that any liability to conviction for the alleged offence is discharged.

Section 53: Disclosure of previous offers

313. This section amends section 69 (notice of previous convictions), section 101 (previous convictions: solemn proceedings), and section 166 (previous convictions: summary proceedings) of the 1995 Act, and makes provisions governing the circumstances in which an offer of an alternative to prosecution can be disclosed to the court. To all intents and purposes the amendments to each section have an identical effect.

314. The primary purpose of these amendments is to allow the prosecutor to include in any notice of previous convictions, whether in a solemn or summary case, details of an alternative to prosecution which has been accepted (completed in the case of a work order) by the alleged offender in the two years preceding the date of the new offence under consideration.
315. In the case of the financial alternatives to prosecution – the “fiscal fine” and the compensation offer – the procurator fiscal can disclose details of these alternative disposals to the court whether the offer has been accepted by payment having been made, or whether acceptance has been deemed by the alleged offender taking no action in respect of the offer.
316. It is not intended that accepted “fiscal fines” or compensation offers, or completed work orders, should be regarded as criminal convictions for this or any other purpose. The relevant sections of the 1995 Act are all amended to make it clear that accepted alternatives to prosecution are to be regarded as “alternative disposals” for the purposes of this part of the Act.
317. In addition, the statute will now explicitly permit prosecutors, on conviction for an offence where an offer of an alternative to prosecution was made, to advise the court of the terms of any such offer.

Section 54: Time bar where offer made

New section 136B – time limits where fixed penalty offer etc. made

318. This section inserts a new section 136B into the 1995 Act. The purpose of this section is to alter the operation of time bar in statutory cases where an alternative to prosecution has been offered. It is intended that this will avoid the situation where the time spent in offering an alternative which is then declined makes it difficult or impossible to take proceedings within statutory time limits.
319. Section 136B applies to conditional offers, compensation offers and work offers. Section 136B(1) provides that in connection with conditional offers and compensation offers, for the purpose of calculation of any period of time bar, the period between the date of any offer of an alternative, and the date of refusal of the offer or date of recall of deemed acceptance, is to be disregarded.
320. In the case of work offers, section 136B(1)(c) provides that the period between the date of the offer and the last date for acceptance of the offer is to be disregarded where the offer is refused. In addition, where the offer is accepted but not completed the time between the date of the offer and the date specified for completion of the order is to be disregarded.
321. Section 136B(2) provides that a prosecutor can certify the period of time which is to be disregarded for these purposes.

Enforcement of fines etc.

Section 55: Fines enforcement officers and their functions

322. This section amends the 1995 Act to include new sections 226A to 226I. These introduce new arrangements for the enforcement of fines and other financial penalties, including provision for the appointment of fines enforcement officers, who will provide information and advice to the offender in relation to payment of the fine and will also have new sanctions to use against offenders who default in payment of their fines or penalties.

New Section 226A – Fines enforcement officers

323. Subsection (1) makes provision for a new post of fines enforcement officer (FEO). FEOs will undertake a number of enforcement related duties previously undertaken by the courts, such as dealing with applications for further time to pay. They will also be responsible for a range of enforcement activity. The FEO will be an officer of the Scottish Court Service (SCS), an agency of the Scottish Executive.
324. Subsection (2) sets out the core functions of FEOs. These are
- to provide information and advice to offenders about payment of fines or penalties, and
 - to secure compliance with the terms of an enforcement order made under section 226B.
325. Subsections (3) and (4) provide that where an offender is subject to more than one enforcement order the FEO must have regard to the total amount outstanding and, where there is an enforcement order in another sheriff court district from that in which the offender resides, the FEO for the district in which the offender resides may assume responsibility for the functions of the order. This is to ensure that only one FEO has responsibility for exercising functions under an enforcement order.
326. Subsections (5) and (6) provide that where an FEO takes responsibility for an enforcement order under subsection (4) that fact must be notified both to the offender and to any FEO for the district in which the enforcement order was made.
327. Subsection (7) empowers the Scottish Ministers to make further provision by regulation as to FEOs and their functions. In due course, this could be used to give FEOs additional functions or to modify the exercise of existing functions. The regulations will be subject to affirmative procedure.

New Section 226B – Enforcement orders

328. Subsections (1) and (2) give the court discretion to make an enforcement order in relation to a fine. The expectation is that the court will make an enforcement order when considering whether to grant time to pay under section 214 or 215 of the 1995 Act. However, the court is not required to make an order if it does not consider that an order would be appropriate.
329. Subsection (7) provides that an enforcement order may be made by the court in the absence of the offender in relation to the payment of certain penalties, on the application of the clerk of court. Those penalties are detailed in subsections (4), (5) and (6). Subsection (7) applies where the offender:
- has accepted or is deemed to have accepted a fixed penalty offer or compensation offer as an alternative to prosecution under section 302(1) or 302A(1) of the 1995 Act (subsection (4));
 - is liable to pay a fixed penalty under section 54 or section 62 of the Road Traffic Offenders Act 1988 which has been registered under section 71 of that Act, or is liable to pay (by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004) a fixed penalty notice issued under section 129 of that Act (subsection (5));
 - is the subject of a transfer of fine order in respect of a fine imposed in England and Wales in relation to which a collection order has been made (subsection (6)).
330. The enforcement order, a copy of which will be sent to all offenders, imposes a statutory requirement to pay the fine or penalty as specified in the order. The order will also contain certain information, as set out in subsection (8), including:

- details of the fine or penalty;
 - the arrangements for making payment (including the time for payment and, if applicable, the number of instalments permitted by the court);
 - contact details of the fines enforcement officer; and
 - information about the effect of the order in the event that the offender defaults on payment of the fine.
331. The sanctions for non – compliance, as detailed in new sections 226D, 226E and 226F include seizure of an offender’s motor vehicle; a deduction from benefits order; earnings arrestment; and arrestment of an offender’s bank or building society account. The enforcement order empowers the FEO to apply these sanctions, subject to the provisions of sections 226D to 226F.
332. Subsections (9) & (10) prohibit the court (when making or intending to make an enforcement order) from imposing an alternative period of imprisonment or dealing with applications for further time to pay for as long as an enforcement order has effect. The order will cease to have effect if the penalty is fully paid or the court decides to revoke the order.

New Section 226C – Variation for further time to pay

333. One of the core functions of the FEO (section 226A(2)(a)) is to provide information and advice to offenders as regards payment. The FEO will make contact with the offender following the making of an enforcement order and will set out the date or dates by which payment is due.
334. However, section 226C empowers the FEO to vary the arrangements for payment. Subsection (3) provides that an application to vary arrangements may be made orally or in writing. The FEO will, as provided in subsection (4), notify the offender of the decision to grant or refuse the application. Section 226H allows an offender to apply to a court for a review of a decision of a FEO regarding the variation of an enforcement order.

New Section 226D – Seizure of vehicles

335. This section empowers a FEO to issue a ‘seizure order’ to immobilise and impound an offender’s motor vehicle. Subsection (4) requires the FEO to notify the offender when a seizure order has been carried out. Subsection (11) prohibits the seizure of a vehicle used by or primarily for carrying disabled persons.
336. Subsections (5) and (6) set out the process to be followed where the fine or penalty remains unpaid following seizure of a motor vehicle, and the powers available to the court. These include making an order for the sale of the vehicle, and applying the proceeds towards the unpaid fine or penalty.
337. Subsection (7) provides that where a third party claims to own a vehicle which has been seized and not yet disposed of, that third party may have the seizure order set aside if it can satisfy the FEO (or subsequently the sheriff) that their claim of ownership is valid. Subsection (8) makes clear that the provision in subsection (7) does not preclude any other proceedings for the recovery of the vehicle.
338. Regulations may be made under subsection (12) in order to provide greater detail about seizure orders, including the circumstances in which they may and may not be made. Subsection (13) provides examples of what the regulations may cover.

New Section 226E - Deduction from Benefits

339. Section 226E enables the FEO to request the court to make an application for a deduction from benefits to be made from an offender, for the purpose of obtaining payment of a fine or penalty.

New Section 226F – Powers of Diligence

340. Section 226F provides that, when making an enforcement order, the court must also grant warrant for civil diligence. This warrant will authorise the FEO to execute arrestment of earnings and funds in bank accounts. The purpose is to obtain the amount of the penalty which has not been paid. The diligence powers of the FEO are subject to regulations which the Scottish Ministers may make about the circumstances in which diligence powers may be exercised and the application of other law relating to diligence. The intention is that any existing and new legislation relating to diligence (such as the Debtors (Scotland) Act 1987 and relevant provisions of the Bankruptcy and Diligence (Scotland) Act 2007) will apply to FEOs when they exercise diligence powers, subject to such modifications as may be necessary.

New Section 226G – Reference of case to court

341. Subsections (1) and (2) make provision for any outstanding fine to be referred back to the court. Referral can take place where the FEO has formed the view that the fine or penalty, or the unpaid balance, is unlikely to be paid or where, for any other reason, the FEO considers it appropriate (for example, where the offender has failed to co-operate with the FEO). In these circumstances the FEO will, as outlined in subsections (3) and (4), provide a report to the court on the circumstances of the case.
342. Subsections (5) to (9) provide details of the procedure to be followed by the court on receipt of a report and reference from the FEO. This will involve an enquiry, in the offender's presence, into the reasons for failure to pay the fine and penalty. The court is given a range of disposal options following such an enquiry. These include revoking the enforcement order and dealing with the offender as if the order had not been made. This could mean imposing a period of imprisonment.

New Section 226H – Review of actions of FEO

343. This section provides that an offender may apply to the court for a review of a decision of a FEO in relation to an application for variation for further time to pay, or an order to immobilise and impound the offender's motor vehicle. The application must be made within 7 days of being notified of the decision relating to further time to pay or the making of a seizure order. When determining the application, the court can confirm, alter or quash the decision of the FEO or make any other order that it considers appropriate.

New Section 226I - Enforcement of fines etc.: Interpretation

344. This section sets out certain definitions for terms used in sections 226A to 226H, and describes the penalties to which these provisions apply. There is an order making power to allow additional penalties to be added to the definition of "relevant penalty". This would have the effect of increasing the range of penalties for which the FEO could have responsibility.

Section 56: Recognition of EU financial penalties

345. **Section 56** entitles Scottish Ministers to make provision, by means of an order subject to the affirmative procedure, implementing any obligation created by or arising under the council Framework decision on the application of the principle of mutual recognition to financial penalties in so far as they have effect in or as regards Scotland. The purpose of the Decision (2005/214/JHA of 24 February 2005) is to allow financial

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

penalties imposed in criminal proceedings to be transferred to other member states for enforcement – improving enforceability of fines across the EU.

Breach of post-conviction orders

Section 57: Probation and community service orders

346. The purpose of this section is to provide that those who are in alleged breach of a probation or community service order will be provided with a copy of the report to the court detailing the grounds of the alleged breach. Service of the copy report is to be in accordance with provisions in the Act of Adjournal, and provision is made for postal service.
347. Subsection (1) makes the change for probation orders; and subsection (2) extends it to community service orders. Sections 232 and 239 of the 1995 Act are amended accordingly.

Section 58: Restriction of liberty orders

348. The purpose of this section is to permit breach of a restriction of liberty order to be proved by the evidence of one witness. This provision brings proof of breach of such orders into line with proof of the breach of probation, community service, drug treatment and testing, and supervised attendance orders. Section 245F of the 1995 Act is amended accordingly.