



# Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

## PART 3

### PENALTIES

#### *Penalties as alternative to prosecution*

#### **50 Fixed penalty and compensation offers**

- (1) In section 302 (fixed penalty: conditional offer by procurator fiscal) of the 1995 Act—
- (a) in subsection (2)—
    - (i) for sub-paragraph (ii) of paragraph (b) there is substituted—
      - “(ii) if the penalty is to be payable by instalments, the amount of the instalments and the intervals at which they should be paid;”
    - (ii) sub-paragraph (iii) of that paragraph and the word “and” immediately preceding it are repealed,
    - (iii) in paragraph (c), for the words “of the fixed penalty or of the first instalment thereof” there is substituted “in respect of the fixed penalty”
  - (iv) after paragraph (c) there is inserted—
    - “(ca) shall indicate—
      - (i) that the alleged offender may refuse the conditional offer by giving notice to the clerk of court in the manner specified in the conditional offer before the expiry of 28 days, or such longer period as may be specified in the conditional offer, beginning on the day on which the conditional offer is made;
      - (ii) that unless the alleged offender gives such notice, the alleged offender will be deemed

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**Changes to legislation:** *There are currently no known outstanding effects for the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Cross Heading: Penalties as alternative to prosecution. (See end of Document for details)*

- to have accepted the conditional offer (even where no payment is made in respect of the offer);
- (iii) that where the alleged offender is deemed as described in sub-paragraph (ii) above to have accepted the conditional offer any liability to conviction of the offence shall be discharged except where the offer is recalled under section 302C of this Act;”,
- (v) the word “and” immediately following paragraph (d) is repealed,
- (vi) for paragraph (e) there is substituted—
- “(e) shall state—
- (i) that the acceptance of the offer in the manner described in paragraph (c) above, or deemed acceptance of the offer as described in paragraph (ca)(ii) above, shall not be a conviction nor be recorded as such;
- (ii) that the fact that the offer has been accepted, or deemed to have been accepted, may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;
- (iii) that if the offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the conditional offer relates;
- (f) shall state that refusal of a conditional offer under paragraph (ca)(i) above will be treated as a request by the alleged offender to be tried for the offence; and
- (g) shall explain the right to request a recall of the fixed penalty under section 302C of this Act.”,
- (b) for subsection (4) there is substituted—
- “(4) The clerk of court shall—
- (a) without delay, notify the procurator fiscal who issued the conditional offer when a notice as described in subsection (2) (ca)(i) above has been received in respect of the offer; or
- (b) following the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the offer, notify the procurator fiscal if no such notice has been received.”,
- (c) after subsection (4) there is inserted—
- “(4A) A conditional offer is accepted by the alleged offender making any payment in respect of the appropriate fixed penalty.
- (4B) Where an alleged offender to whom a conditional offer of a fixed penalty is made does not give notice as described in subsection (2) (ca)(i) above, the alleged offender is deemed to have accepted the conditional offer.

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(4C) Where—

- (a) an alleged offender accepts a conditional offer as described in subsection (4A) above; or
- (b) an alleged offender is deemed to have accepted a conditional offer under subsection (4B) above and the fixed penalty is not recalled,

no proceedings shall be brought against the alleged offender for the offence.”,

- (d) subsections (5) and (6) are repealed,
- (e) in subsection (7), the words from “, the amount” to the end are repealed,
- (f) after subsection (7) there is inserted—

“(7A) The amount of the maximum penalty on the scale prescribed under subsection (7) above may not exceed £300 or such higher sum as the Scottish Ministers may by order specify.”,

(g) in subsection (8)—

- (i) after the word “(7)” there is inserted “ or (7A) ”,
- (ii) in paragraph (b), for the words from “be” in the second place where it occurs to the end there is substituted “ not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament ”,

(h) after subsection (8) there is inserted—

“(8A) The alleged offender shall be presumed to have received a conditional offer under subsection (1) above if the offer is sent to—

- (a) the address given by the alleged offender in a request for recall under section 302C(1) of this Act of an earlier offer in the same matter; or
- (b) any address given by the alleged offender to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

(8B) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—

- (a) the address to which a conditional offer under subsection (1) above was sent provided it is proved that the accused received the offer; or
- (b) any address given by the accused to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.”,

(i) in subsection (9), for the words “competently be tried before a district court” there is substituted “ be tried summarily ”.

(2) After section 302 of that Act there is inserted—

#### **“302A Compensation offer 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 compensation offer); and where he issues

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a compensation offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the offer and of its terms.

(2) A compensation 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 compensation payable;
  - (ii) if the compensation is to be payable by instalments, the amount of the instalments and the intervals at which they should be paid;
- (c) shall indicate that if, within 28 days of the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender accepts the offer by making payment in respect of the offer to the clerk of court specified in the offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;
- (d) shall indicate—
  - (i) that the alleged offender may refuse the offer by giving notice to the clerk of court in the manner specified in the offer before the expiry of 28 days, or such longer period as may be specified in the offer, beginning on the day on which the offer is made;
  - (ii) that unless the alleged offender gives such notice, the alleged offender will be deemed to have accepted the offer (even where no payment is made in respect of the offer);
  - (iii) that where the alleged offender is deemed as described in subparagraph (ii) above to have accepted the offer any liability to conviction of the offence shall be discharged except where the offer is recalled under section 302C of this Act;
- (e) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the offer was made, or such longer period as may be specified in the offer;
- (f) shall state—
  - (i) that the acceptance of the offer in the manner described in paragraph (c) above, or deemed acceptance of the offer as described in paragraph (d)(ii) above, shall not be a conviction nor be recorded as such;
  - (ii) that the fact that the offer has been accepted, or deemed to have been accepted, may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;
  - (iii) that if the offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the offer relates;
- (g) shall state that refusal of an offer under paragraph (d)(i) above will be treated as a request by the alleged offender to be tried for the offence; and

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- (h) shall explain the right to request a recall of the offer under section 302C of this Act.
- (3) A compensation offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount payable in respect of the offer for all the offences in relation to which it is issued.
- (4) The clerk of court shall—
  - (a) without delay, notify the procurator fiscal who issued the compensation offer when a notice as described in subsection (2)(d)(i) above has been received in respect of the offer; or
  - (b) following the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the offer, notify the procurator fiscal if no such notice has been received.
- (5) A compensation offer is accepted by the alleged offender making any payment in respect of the offer.
- (6) Where an alleged offender to whom a compensation offer is made does not give notice as described in subsection (2)(d)(i) above, the alleged offender is deemed to have accepted the offer.
- (7) Where—
  - (a) an alleged offender accepts a compensation offer as described in subsection (5) above; or
  - (b) an alleged offender is deemed to have accepted a compensation offer under subsection (6) above and the offer is not recalled,no proceedings shall be brought against the alleged offender for the offence.
- (8) The Scottish Ministers shall by order prescribe the maximum amount of a compensation offer; but that amount shall not exceed level 5 on the standard scale.
- (9) An order under subsection (8) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (10) The alleged offender shall be presumed to have received a compensation offer under subsection (1) above if the offer is sent to—
  - (a) the address given by the alleged offender in a request for recall under section 302C(1) of this Act of an earlier offer in the same matter; or
  - (b) any address given by the alleged offender to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.
- (11) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—
  - (a) the address to which a compensation offer under subsection (1) above was sent provided it is proved that the accused received the offer; or
  - (b) any address given by the accused to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

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- (12) The clerk of court shall account for the amount paid under a compensation offer to the person entitled thereto.
- (13) In this section, a “relevant offence” means any offence—
- (a) in respect of which an alleged offender could be tried summarily; and
  - (b) on conviction of which it would be competent for the court to make a compensation order under section 249 of this Act.

### **302B Combined fixed penalty and compensation offer**

- (1) The procurator fiscal may send to an alleged offender a notice under sections 302(1) and 302A(1) of this Act in respect of the same relevant offence (referred to in this section as a “combined offer”).
- (2) A combined offer shall be contained in the one notice.
- (3) In addition to the information required to be provided under sections 302(2) and 302A(2) of this Act, the combined offer shall state—
- (a) that the combined offer consists of both a fixed penalty offer and a compensation offer;
  - (b) the whole amount of the combined offer; and
  - (c) that liability to conviction of the offence shall not be discharged unless the whole of the combined offer is accepted.
- (4) Any acceptance or deemed acceptance of part of a combined offer shall be treated as applying to the whole of the offer.

### **302C Recall of fixed penalty or compensation offer**

- (1) Where an alleged offender is deemed to have accepted—
- (a) a fixed penalty offer by virtue of section 302(2)(ca)(ii) of this Act; or
  - (b) a compensation offer by virtue of section 302A(2)(d)(ii) of this Act,
- the alleged offender may request that it be recalled.
- (2) A request for recall under subsection (1) above is valid only if—
- (a) the alleged offender claims that he—
    - (i) did not receive the offer concerned; and
    - (ii) would (if he had received it) have refused the offer; or
  - (b) the alleged offender claims that—
    - (i) although he received the offer concerned, it was not practicable by reason of exceptional circumstances for him to give notice of refusal of the offer; and
    - (ii) he would (but for those circumstances) have refused the offer.
- (3) A request for recall of a fixed penalty offer or a compensation offer requires to be made—
- (a) to the clerk of court referred to in the offer; and
  - (b) no later than 7 days after the expiry of the period specified in the offer for payment of the fixed penalty or compensation offer or, where a notice is sent in pursuance of section 303(1A)(a) of this Act, no later than 7 days after it is sent.

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- (4) The clerk of court may, on cause shown by reference to subsection (2) above, consider a request for recall of such an offer despite its being made outwith the time limit applying by virtue of subsection (3)(b) above.
  - (5) The clerk of court may, following receipt of such a request—
    - (a) uphold the fixed penalty offer or compensation offer; or
    - (b) recall it.
  - (6) The alleged offender may, within 7 days of a decision under subsection (5)
    - (a) above, apply to the court specified in the offer for a review of the decision (including as it involves a question which arose by reference to subsections (2) to (4) above).
  - (7) In a review under subsection (6) above, the court may—
    - (a) confirm or quash the decision of the clerk;
    - (b) in either case, give such direction to the clerk as the court considers appropriate.
  - (8) The decision of the court in a review under subsection (6) above shall be final.
  - (9) The clerk of court shall, without delay, notify the procurator fiscal of—
    - (a) a request for recall under subsection (1) above;
    - (b) an application for review under subsection (6) above;
    - (c) any decision under subsection (5) or (7) above.
  - (10) For the purposes of this section, a certificate given by the procurator fiscal as to the date on which a fixed penalty offer or compensation order was sent shall be sufficient evidence of that fact.”.
- (3) In section 303 (fixed penalty: enforcement) of that Act—
- (a) for subsection (1) there is substituted—

“(1) Subject to subsections (1A) and (2) below, where an alleged offender accepts a fixed penalty offer under section 302 of this Act or a compensation offer under section 302A of this Act, any amount of it which is outstanding at any time shall be treated as if the penalty or offer were a fine imposed by the court (the clerk of which is specified in the notice).”
  - (b) after subsection (1) there is inserted—

“(1A) No action shall be taken to enforce a fixed penalty or compensation offer which an alleged offender is deemed to have accepted by virtue of section 302(2)(ca)(ii) or section 302A(2)(d)(ii) of this Act unless—

    - (a) the alleged offender is sent a notice—
      - (i) of the intention to take enforcement action; and
      - (ii) which explains the right to request a recall of the penalty or offer under section 302C of this Act;
    - (b) any request for recall made under that section has been finally disposed of.”
  - (c) in subsection (2), for the word “penalty” there is substituted “ fixed penalty or compensation offer ”,
  - (d) in subsection (3), after the word “penalty” there is inserted “ or compensation offer ”.

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### Commencement Information

- II** S. 50 wholly in force at 10.3.2008, see s. 84 and S.S.I. 2008/42. {art. 3}, Sch. (subject to savings in art. 6)

## 51 Work orders

After section 303 of the 1995 Act there is inserted—

### “303ZA Work orders

- (1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send the alleged offender a notice under this section (referred to in this section as a work offer) which offers the alleged offender the opportunity of performing unpaid work.
- (2) The total number of hours of unpaid work shall be not less than 10 nor more than 50.
- (3) A work 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 number of hours of unpaid work which the alleged offender is required to perform;
    - (ii) the date by which that work requires to be completed;
  - (c) shall indicate that if the alleged offender—
    - (i) accepts the work offer; and
    - (ii) completes the work to the satisfaction of the supervising officer,
 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 28 days from the date on which the offer was issued, or such longer period as may be specified in the offer;
  - (e) shall state—
    - (i) that acceptance of a work offer in the manner described in subsection (5) below shall not be a conviction nor be recorded as such;
    - (ii) that the fact that the offer has been accepted may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;
    - (iii) that if a work order made under subsection (6) below is not completed, that fact may be disclosed to the court in any proceedings for the offence to which the order relates.



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- (4) A work offer may be made in respect of more than one relevant offence and shall, in such a case, state the total amount of work requiring to be performed in respect of the offences in relation to which it is made.
- (5) An alleged offender accepts a work offer by giving notice to the procurator fiscal specified in the order before the expiry of 28 days, or such longer period as may be specified in the offer, beginning on the day on which the offer is made.
- (6) If (and only if) the alleged offender accepts a work offer, the procurator fiscal may make an order (referred to in this section as a work order) against the alleged offender.
- (7) Notice of a work order—
  - (a) shall be sent to the alleged offender as soon as reasonably practicable after acceptance of the work offer; and
  - (b) shall contain—
    - (i) the information mentioned in subsection (3)(b) above; and
    - (ii) the name and contact details of the person who is to act as supervisor (“the supervising officer”) in relation to the alleged offender.
- (8) The procurator fiscal shall notify the local authority which will be responsible for supervision of an alleged offender of the terms of any work order sent to the alleged offender.
- (9) Where a work order is made, the supervising officer shall—
  - (a) determine the nature of the work which the alleged offender requires to perform;
  - (b) determine the times and places at which the alleged offender is to perform that work;
  - (c) give directions to the alleged offender in relation to that work;
  - (d) provide the procurator fiscal with such information as the procurator fiscal may require in relation to the alleged offender's conduct in connection with the requirements of the order.
- (10) In giving directions under subsection (9)(c) above, a supervising officer shall, so far as practicable, avoid—
  - (a) any conflict with the alleged offender's religious beliefs;
  - (b) any interference with the times at which the alleged offender normally—
    - (i) works (or carries out voluntary work); or
    - (ii) attends an educational establishment.
- (11) The supervising officer shall, on or as soon as practicable after the date referred to in subsection (3)(b)(ii) above, notify the procurator fiscal whether or not the work has been performed to the supervising officer's satisfaction.
- (12) Where an alleged offender completes the work specified in the work order to the satisfaction of the supervising officer, no proceedings shall be brought against the alleged offender for the offence.

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- (13) The Scottish Ministers may, by regulations, make provision for the purposes of subsection (9) above (including, in particular, the kinds of activity of which the work requiring to be performed may (or may not) consist).
- (14) Regulations under subsection (13) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (15) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—
- (a) the address to which a work offer was sent provided it is proved that the accused received the offer; or
  - (b) any address given, in connection with the offer, by the accused to the procurator fiscal specified in the offer.
- (16) In this section, a “relevant offence” means any offence in respect of which an alleged offender could be tried summarily.”

#### Commencement Information

- I2** S. 51 partly in force; s. 51 not in force at Royal Assent, see s. 84; s. 51 in force for certain purposes at 2.6.2008 by S.S.I. 2008/192, art. 3, Sch.

## 52 Setting aside of offers and orders

After section 303ZA (inserted by section 51 of this Act) of the 1995 Act there is inserted—

### “303ZB Setting aside of offers and orders

- (1) Where this subsection applies, the procurator fiscal may set aside—
  - (a) a fixed penalty offer made under section 302(1) of this Act;
  - (b) a compensation offer made under section 302A(1) of this Act;
  - (c) a work offer made under section 303ZA(1) of this Act;
  - (d) a work order made under section 303ZA(6) of this Act.
- (2) Subsection (1) above applies where, on the basis of information which comes to the procurator fiscal's attention after the offer or (as the case may be) order has been made, the procurator fiscal considers that the offer or (as the case may be) order should not have been made in respect of the alleged offender.
- (3) The procurator fiscal may act under subsection (1)(a) to (c) above even where the offer has been accepted (including, in the case of an offer mentioned in subsection (1)(a) or (b) above, deemed to have been accepted).
- (4) Where the procurator fiscal acts under subsection (1) above, the procurator fiscal shall give the alleged offender notice—
  - (a) of the setting aside of the offer or (as the case may be) order; and
  - (b) indicating that any liability of the alleged offender to conviction of the alleged offence is discharged.”

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### Commencement Information

- I3** S. 52 wholly in force at 10.3.2008, see s. 84 and S.S.I. 2008/42. {art. 3}, Sch. (subject to savings in art. 6)

## 53 Disclosure of previous offers

- (1) In section 69 (notice of previous convictions) of the 1995 Act, after subsection (5) there is added—

“(6) This section applies in relation to the alternative disposals mentioned in subsection (7) below as it applies in relation to previous convictions.

- (7) Those alternative disposals are—

- (a) a—
- (i) fixed penalty under section 302(1) of this Act;
  - (ii) compensation offer under section 302A(1) of this Act, that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;
- (b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged.”.

- (2) In section 101 (previous convictions: solemn proceedings) of that Act, after subsection (8) there is added—

“(9) This section, except subsection (2) above, applies in relation to the alternative disposals mentioned in subsection (10) below as it applies in relation to previous convictions.

- (10) Those alternative disposals are—

- (a) a—
- (i) fixed penalty under section 302(1) of this Act;
  - (ii) compensation offer under section 302A(1) of this Act, that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;
- (b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged.

- (11) Nothing in this section or in section 69 of this Act shall prevent the prosecutor, following conviction of an accused of an offence—

- (a) to which a fixed penalty offer made under section 302(1) of this Act related;
- (b) to which a compensation offer made under section 302A(1) of this Act related; or
- (c) to which a work offer made under section 303ZA(1) of this Act related,

providing the judge with information about the making of the offer (including the terms of the offer).”.

- (3) In section 166 (previous convictions: summary proceedings) of that Act, after subsection (8) there is added—

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- “(9) This section, except subsection (8) above, applies in relation to the alternative disposals mentioned in subsection (10) below as it applies in relation to previous convictions.
- (10) Those alternative disposals are—
- (a) a—
    - (i) fixed penalty under section 302(1) of this Act;
    - (ii) compensation offer under section 302A(1) of this Act, that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;
  - (b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged.
- (11) Nothing in this section shall prevent the prosecutor, following conviction of an accused of an offence—
- (a) to which a fixed penalty offer made under section 302(1) of this Act related;
  - (b) to which a compensation offer made under section 302A(1) of this Act related; or
  - (c) to which a work offer made under section 303ZA(1) of this Act related,
- providing the judge with information about the making of the offer (including the terms of the offer).”.

#### Commencement Information

**I4** [S. 53](#) wholly in force at 10.3.2008, see [s. 84](#) and [S.S.I. 2008/42](#). {art. 3}, Sch. (subject to savings in art. 6)

## 54 Time bar where offer made

After section 136A of the 1995 Act (inserted by section 23 of this Act) there is inserted—

### “136B Time limits where fixed penalty offer etc. made

- (1) For the purposes of section 136 of this Act, and any provision of any other enactment for a time limit within which proceedings are to be commenced, in calculating the period since a contravention occurred—
- (a) where a fixed penalty offer is made under section 302(1) of this Act, the period between the date of the offer and—
    - (i) the receipt by the procurator fiscal of a notice under section 302(4) of this Act;
    - (ii) a recall of the fixed penalty by virtue of section 302C of this Act,
 shall be disregarded;
  - (b) where a compensation offer is made under section 302A(1) of this Act, the period between the date of the offer and—

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- (i) the receipt by the procurator fiscal of a notice under section 302A(4) of this Act;
  - (ii) a recall of the offer by virtue of section 302C of this Act, shall be disregarded;
  - (c) where a work offer is made under section 303ZA(1) of this Act, the period between the date of the offer and—
    - (i) if the alleged offender does not accept the offer in the manner described in section 303ZA(5) of this Act, the last date for notice of acceptance of the offer;
    - (ii) if the alleged offender accepts the offer as so described, but fails to complete the subsequent work order, the date specified for completion of the order, shall be disregarded.
- (2) A certificate purporting to be signed by or on behalf of the prosecutor which states a period to be disregarded by virtue of subsection (1) above is sufficient authority for the period to be disregarded.”.

#### **Commencement Information**

**15** S. 54 wholly in force at 10.3.2008, see s. 84 and S.S.I. 2008/42. {art. 3}, Sch. (subject to savings in art. 6)

**Status:**

Point in time view as at 02/06/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the *Criminal Proceedings etc. (Reform) (Scotland) Act 2007*, Cross Heading: Penalties as alternative to prosecution.