



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

Fixed penalties

302 Fixed penalty: conditional 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 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) 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 appropriate fixed penalty for that offence;
 - [^{F1}(ii) if the penalty is to be payable by instalments, the amount of the instalments and the intervals at which they should be paid;]^{F2} ...
 - (iii) ^{F2} ...
 - (c) shall indicate that if, within 28 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 [^{F3}in respect of the fixed penalty] to the clerk of court specified in the conditional offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;
- [^{F4}(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

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- 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 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 subparagraph (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;]
- (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 conditional offer was issued, or such longer period as may be specified in the conditional offer; ^{F5}...
- [^{F6}(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;
- [^{F7}(ia) that that fact may be disclosed to the court also in any proceedings for an offence to which the alleged offender is, or is liable to become, subject at such time as the offer is accepted;]
- (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.]
- (3) A conditional offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount of the appropriate fixed penalty for all the offences in respect of which it is made.
- [^{F8}(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.]
- [^{F9}(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.]

(5) ^{F10}

(6) ^{F10}

(7) The Secretary of State shall, by order, prescribe a scale of fixed penalties for the purpose of this section ^{F11}....

[^{F12}(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.]

(8) An order under subsection (7) [^{F13}or (7A)] above—

- (a) may contain provision as to the payment of fixed penalties by instalments; and
- (b) shall be made by statutory instrument, which shall [^{F14}not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament].

[^{F15}(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.]

(9) In this section—

- (a) “a relevant offence” means any offence in respect of which an alleged offender could [^{F16}be tried summarily], but shall not include a fixed penalty offence within the meaning of section 51 of the ^{M1}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 ; and
- (b) “the appropriate fixed penalty” means such fixed penalty on the scale prescribed under subsection (7) above as the procurator fiscal thinks fit having regard to the circumstances of the case.

Textual Amendments

F1 S. 302(2)(b)(ii) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), **ss. 50(1)(a)(i)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)

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- F2** S. 302(2)(b)(iii) and preceding word repealed (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(a)(ii)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F3** Words in s. 302(2)(c) substituted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(a)(iii)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F4** S. 302(2)(ca) inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(a)(iv)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F5** Word immediately following s. 302(2)(d) repealed (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(a)(v)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F6** S. 302(2)(e)-(g) substituted (10.3.2008) for s. 302(2)(e) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(a)(vi)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F7** S. 302(2)(e)(ia) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 70(3)**, 206(1); S.S.I. 2011/178, art. 2, **sch.**
- F8** S. 302(4) substituted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(b)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F9** S. 302(4A)-(4C) inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(c)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F10** S. 302(5)(6) repealed (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(d)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F11** Words in s. 302(7) repealed (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(e)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F12** S. 302(7A) inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(f)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F13** Words in s. 302(8) inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(g)(i)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F14** Words in s. 302(8)(b) substituted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(g)(ii)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F15** S. 302(8A)(8B) inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(h)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)
- F16** Words in s. 302(9) substituted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(1)(i)**, 84; S.S.I. 2008/42, art. 3, **Sch.** (subject to arts. 4-6)

Modifications etc. (not altering text)

- C1** S. 302(7A) modified (temp.) (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 50-54, 59(1)**, **sch. para. 13** (which affecting provision is continued until 30.11.2024 by S.S.I. 2023/360, **reg. 3(2)**)

Marginal Citations

- M1** 1988 c.53.

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Changes and effects yet to be applied to :

- s. 302(9)(a) words inserted by [2003 c. 21 Sch. 17 para. 133\(2\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to [legislation.gov.uk. 1997 c. 48, s. 1 repealed \(27.6.2003\)](#) without ever being in force by [2003 asp 7, s. 19\(3\)](#); [S.S.I. 2003/288, art. 2, Sch.](#))
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to [legislation.gov.uk. 1997 c. 48, s. 1 repealed \(27.6.2003\)](#) without ever being in force by [2003 asp 7, s. 19\(3\)](#); [S.S.I. 2003/288, art. 2, Sch.](#))