

**EXECUTIVE NOTE**  
**DRAFT : THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995 FIXED**  
**PENALTY ORDER 2008**

1. The above Order was made in exercise of the powers conferred by section 302(7) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). The instrument is subject to affirmative resolution procedure under section 302(8)(b) of the 1995 Act.
2. The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”) received Royal Assent on 22 February 2007. Section 50(1) of the 2007 Act amends section 302 of the 1995 Act and will be brought into force on 10 March 2008. This Order is therefore being made using an anticipatory exercise of power as provided for in terms of paragraph 10 of the schedule to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SSI 1999/1379). This is to give full effect to the provisions of section 50 of the 2007 Act, in relation to conditional offers of fixed penalties by procurators fiscal, upon entry into force on 10 March 2008.

**Policy Objectives**

3. Article 2 prescribes the scale of fixed penalty offers at £50, £75, £100, £150, £200, £250 and £300. This provision is made under section 302(7) of the 1995 Act, as amended by section 50(1)(e) of the 2007 Act, which provides that the Secretary of State shall prescribe the scale by which the procurator fiscal may make a conditional offer of a fixed penalty (this function transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998). Section 302(7A), as inserted by section 50(1)(f) of the 2007 Act, specifies that the maximum penalty of such a scale may not exceed £300.
4. The maximum level is increased from £100 to £300 to afford greater flexibility to procurators fiscal in determining the most appropriate and effective penalty for an offence. Acceptance of a fixed penalty offer is not recorded as a conviction, however, it may be disclosed to a court if the court is sentencing an offender for an offence committed within 2 years of acceptance of the offer. There is no change to the current position in respect of the alleged offender being able to reject the offer from the prosecutor fiscal. In these circumstances, the procurator fiscal may seek to prosecute. It is intended that the new maximum level will allow more cases of a less serious nature to be dealt with proportionately, and release capacity for the courts to deal with more serious cases. The appropriate use of alternatives to prosecution is an essential part of the overarching aims of improving the efficiency and effectiveness of the summary justice system.
5. Article 3 revokes the Criminal Justice (Scotland) Act 1987 Fixed Penalty Order 1996 (SSI 1996/617).

**Consultation**

6. Many of the provisions of the 2007 Act are based on the recommendations of the ‘McInnes Committee’ and subsequent consultation during 2004. The Scottish Executive published *Smarter Justice, Safer Communities – Summary Justice Reform Next Steps*<sup>1</sup>, in

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<sup>1</sup> Scottish Executive, *Smarter Justice, Safer Communities: Summary Justice Reform - Next Steps*, available at: <http://www.scotland.gov.uk/Publications/2005/03/20888/55016>

March 2005 following extensive consultation on the recommendations of the report<sup>2</sup> of the Committee chaired by Sheriff Principal John McInnes. Details of the history of the Act, including the McInnes report, and the *Smarter Justice* paper are all available through the Scottish Government's summary justice reform website.<sup>3</sup>

7. Some respondents to the consultation following the McInnes report expressed concern regarding the recommendation to increase the maximum level of a procurator fiscal fixed penalty offer. However, some other respondents supported an increase in the maximum level.

8. The 2007 Act as introduced into parliament contained a provision that would have increased the maximum level of a procurator fiscal fixed penalty offer to £500 (the McInnes report recommendation). Following concerns expressed during stages 1 and 2 by, amongst others, members of the Justice 1 Committee, amendments were tabled at stage 3 that reduced this maximum level from £500 to £300, with provision that the maximum could be increased in the future by an order subject to affirmative resolution procedure.

9. Following careful consideration, it is decided that as the maximum level had not been increased since 1996, even to take account of inflation, an increase to £300 would help reflect the passage of time since then. The increase in the maximum level would also give prosecutors some more flexibility in an increased number of appropriate cases to offer a non court disposal to an alleged offender. This order therefore confirms the maximum level of a procurator fiscal fixed penalty offer at £300.

### **Financial Effects**

10. The estimated financial effects of increasing the maximum level of fixed penalty offers available to procurators fiscal were set out in the Financial Memorandum to the Criminal Proceedings etc. (Reform) (Scotland) Bill. The Financial Memorandum estimated that there were potential time-releasing savings for the Crown Office and Procurator Fiscal Service (COPFS) of between £0.5m and £0.8m each year as a combined result of the introduction of the fiscal compensation offer and the change to the maximum level of fixed penalty offers.

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<sup>2</sup> Scottish Executive, *Report of the Summary Justice Review Committee*, available at: <http://www.scotland.gov.uk/Publications/2004/03/19042/34176>

<sup>3</sup> The summary justice reform website can be found at: <http://www.scotland.gov.uk/Topics/Justice/criminal/criminalprocedure/19008>