Road Traffic Act 1991

1991 CHAPTER 40

PART I

GENERAL

Penalties

34 Conditional offer of fixed penalty.

For sections 75 to 77 of the [M1]Road Traffic Offenders Act 1988 (which relate to Scotland only) there shall be substituted—

" Conditional offer of fixed penalty

75 Issue of conditional offer.

(1) Where in England and Wales—

(a) a constable has reason to believe that a fixed penalty offence has been committed, and

(b) no fixed penalty notice in respect of the offence has been given under section 54 of this Act or fixed to a vehicle under section 62 of this Act,

a notice under this section may be sent to the alleged offender by or on behalf of the chief officer of police.

(2) Where in Scotland a procurator fiscal receives a report that—

(a) an offence specified in Schedule 3 to this Act has been committed,

(b) an offence specified in Schedule 5 to this Act has been committed,

(c) an offence referred to in paragraph (a) or (b) above has been committed, being an offence of causing or permitting a vehicle to be used by another person in contravention of any provision made or any restriction or prohibition imposed by or under any enactment, or

(d) an offence of aiding, abetting, counselling, procuring or inciting the commission of an offence referred to in this subsection, has been committed,

he may send a notice under this section to the alleged offender.

(3) Where in Scotland, a constable—

(a) on any occasion has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence, he may hand to that person,

(b) in any case has reason to believe that a fixed penalty offence has been committed, he or another person authorised in that respect by the chief constable may send to the alleged offender,

a notice under this section.

(4) Subsections (2) and (3) above shall not apply where a fixed penalty notice has been fixed to a vehicle under section 62 of this Act.

(5) A notice under this section is referred to in this section and sections 76 and 77 as a "conditional offer".

(6) Where a person issues a conditional offer, he must notify the justices' clerk, or in Scotland clerk of court, specified in it of its issue and its terms; and that clerk is referred to in this section and sections 76 and 77 as "the fixed penalty clerk".

(7) A conditional offer must—

(a) 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) state the amount of the fixed penalty for that offence, and

(c) state that proceedings against the alleged offender cannot be commenced in respect of that offence until the end of the period of twenty-eight days following the date on which the conditional offer was issued or such longer period as may be specified in the conditional offer.

(8) A conditional offer must indicate that if the following conditions are fulfilled, that is—

(a) within the period of twenty-eight days following the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender—

(i) makes payment of the fixed penalty to the fixed penalty clerk, and

(ii) where the offence to which the offer relates is an offence involving obligatory endorsement, at the same time delivers his licence and its counterpart to that clerk, and

(b) where his licence and its counterpart are so delivered, that clerk is satisfied on inspecting them that, if the alleged offender were convicted of the offence, he would not be liable to be disqualified under section 35 of this Act,

any liability to conviction of the offence shall be discharged.

(9) For the purposes of the condition set out in subsection (8)(b) above, it shall be assumed, in the case of an offence in relation to which a range of numbers is

shown in the last column of Part I of Schedule 2 to this Act, that the number of penalty points to be attributed to the offence would be the lowest in the range.

(10) The Secretary of State may by order provide for offences to become or (as the case may be) to cease to be offences in respect of which a conditional offer may be sent under subsection (2)(b) above, and may make such modifications of the provisions of this Part of this Act as appear to him to be necessary for the purpose.

(11) An offence committed by aiding, abetting, counselling, procuring or inciting the commission of an offence which is an offence involving obligatory endorsement is itself an offence involving obligatory endorsement for the purposes of the application of this Part of this Act in Scotland.

(12) In relation to licences which came into force before 1st June 1990, the references in subsection (8) above to the counterpart of a licence shall be disregarded.

76 Effect of offer and payment of penalty.

(1) This section applies where a conditional offer has been sent to a person under section 75 of this Act.

(2) No proceedings shall be brought against any person for the offence to which the conditional offer relates until—
   (a) in England and Wales, the chief officer of police, or
   (b) in Scotland, the procurator fiscal or (where the conditional offer was issued under section 75(3) of this Act) the chief constable,

   receives notice in accordance with subsection (4) or (5) below.

(3) Where the alleged offender makes payment of the fixed penalty in accordance with the conditional offer, no proceedings shall be brought against him for the offence to which the offer relates.

(4) Where—
   (a) the alleged offender tenders payment in accordance with the conditional offer and delivers his licence and its counterpart to the fixed penalty clerk, but
   (b) it appears to the clerk, on inspecting the licence and counterpart, that the alleged offender would be liable to be disqualified under section 35 of this Act if he were convicted of the offence to which the conditional offer relates,

   then subsection (3) above shall not apply and the clerk must return the licence and its counterpart to the alleged offender together with the payment and give notice that he has done so to the person referred to in subsection (2)(a) or (b) above.

(5) Where, on the expiry of the period of twenty-eight days following the date on which the conditional offer was made or such longer period as may be specified in the offer, the conditions specified in the offer in accordance with section 75(8)(a) of this Act have not been fulfilled, the fixed penalty clerk must notify the person referred to in subsection (2)(a) or (b) above.

(6) In determining for the purposes of subsection (4)(b) above whether a person convicted of an offence would be liable to disqualification under section 35, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 2 to this Act, that the number of penalty points to be attributed to the offence would be the lowest in the range.

(7) In any proceedings a certificate that by a date specified in the certificate payment of a fixed penalty was or was not received by the fixed penalty clerk shall, if the certificate purports to be signed by that clerk, be evidence, or in Scotland sufficient evidence, of the facts stated.

(8) In relation to licences which came into force before 1st June 1990, the references in subsection (4) above to the counterpart of a licence shall be disregarded.

(9) In Scotland, the Secretary of State may by regulations vary the provisions of subsection (2)(b) above.

77 Endorsement where penalty paid.

(1) Where—

(a) in pursuance of a conditional offer a person (referred to in this section as the "licence holder") makes payment of the fixed penalty to the fixed penalty clerk and delivers his licence and its counterpart to the clerk, and

(b) the clerk is not required by subsection (4) of section 76 of this Act to return the licence and its counterpart to him and did not, before the payment was tendered, notify the person referred to in section 76(2)(a) or (b) of this Act under subsection (5) of that section,

the clerk must forthwith endorse the relevant particulars on the counterpart of the licence and return it to the licence holder together with the licence.

(2) Where it appears to a fixed penalty clerk in Scotland that there is an error in an endorsement made by virtue of this section on the counterpart of a licence he may amend the endorsement so as to correct the error; and the amended endorsement shall have effect and shall be treated for all purposes as if it had been correctly made on receipt of the fixed penalty.

(3) Subject to subsection (4) below, where a cheque tendered in payment is subsequently dishonoured—

(a) any endorsement made by a clerk under subsection (1) above remains effective, notwithstanding that the licence holder is still liable to prosecution in respect of the alleged offence to which the endorsement relates, and

(b) the clerk must, upon the expiry of the period specified in the conditional offer or, if the period has expired, forthwith notify the person referred to in section 76(2)(a) or (b) of this Act that no payment has been made.

(4) When proceedings are brought against a licence holder after a notice has been given in pursuance of subsection (3)(b) above, the court—

(a) must order the removal of the fixed penalty endorsement from the counterpart of the licence, and

(b) may, on finding the licence holder guilty, make any competent order of endorsement or disqualification and pass any competent sentence.

(5) The reference in subsection (1) above to the relevant particulars is to—

(a) particulars of the offence, including the date when it was committed, and

(b) the number of penalty points to be attributed to the offence.

(6) The fixed penalty clerk must send notice to the Secretary of State—

(a) of any endorsement under subsection (1) above and of the particulars endorsed,

(b) of any amendment under subsection (2) above, and

(c) of any order under subsection (4)(a) above.

(7) Where the counterpart of a person's licence is endorsed under this section he shall be treated for the purposes of sections 13(4), 28, 29 and 45 of this Act and of the Rehabilitation of Offenders Act 1974 as if—

(a) he had been convicted of the offence,

(b) the endorsement had been made in pursuance of an order made on his conviction by a court under section 44 of this Act, and

(c) the particulars of the offence endorsed by virtue of subsection (5)(a) above were particulars of his conviction of that offence.

(8) In relation to any endorsement of the counterpart of a person's licence under this section—

(a) the reference in section 45(4) of this Act to the order for endorsement, and

(b) the references in section 13(4) of this Act to any order made on a person's conviction,

are to be read as references to the endorsement itself.

(9) In relation to licences which came into force before 1st June 1990, the references in this section to the counterpart of a licence shall be disregarded or, as the case may require, construed as references to the licence itself."

Commencement Information

I1 S. 34 wholly in force at 1.7.1992 see s. 84 and S.I. 1992/1286, art. 2, **Sch.**

Marginal Citations

M1 1988 c. 53.

Changes to legislation:
There are currently no known outstanding effects for the Road Traffic Act 1991, Section 34.