

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

EXPLANATORY NOTES

INTRODUCTION

Part 3 – Penalties

Penalties as alternative to prosecution

Section 50: Fixed penalty and compensation offers

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.