

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

2007 asp 6

## PART 3

### PENALTIES

#### *Sentencing powers*

#### **43 Common law offences**

In section 5 (the sheriff: summary jurisdiction and powers) of the 1995 Act—

- (a) in paragraph (d) of subsection (2), for the word “three” there is substituted “12”, and
- (b) subsection (3) is repealed.

#### **44 Particular statutory offences**

- (1) In section 41 (assaults on constables, etc.) of the Police (Scotland) Act 1967 (c. 77), in subsection (1), for the word “nine” there is substituted “12”.
- (2) In section 26A (enforcement of wildlife legislation) of the Wildlife and Countryside Act 1981 (c. 69), for the words from “as amended” to “97/62/EC” there is substituted “(that is, the Directive as amended from time to time by any other Community instrument or otherwise)”.
- (3) In section 37 (offences) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)—
  - (a) in subsection (4), for the words from “(a “relevant offence”)” to the end there is substituted “shall be liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c. 46) or to both.”,
  - (b) subsection (5) is repealed.
- (4) In section 6 (penalties) of the Emergency Workers (Scotland) Act 2005 (asp 2)—
  - (a) for the word “9” there is substituted “12”,

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- (b) for the words “level 5 on the standard scale” there is substituted “the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c. 46)”.
- (5) In section 39 (assaulting or impeding employees discharging certain functions) of the Fire (Scotland) Act 2005 (asp 5), in subsection (4)—
  - (a) for the word “9” there is substituted “12”,
  - (b) after the word “scale” there is added “or to both”.
- (6) This section does not affect the penalty for an offence committed before the coming into force of this section.

#### **45 Other statutory offences**

- (1) The maximum term of imprisonment to which a person is liable on summary conviction of a relevant offence is, by virtue of this subsection, 12 months.
- (2) Accordingly, the specification of a maximum period of imprisonment in every relevant penalty provision is, in relation to any relevant offence to which it applies, to be read subject to subsection (1).
- (3) Without prejudice to subsections (1) and (2), the Scottish Ministers may by order amend the specification of a maximum term of imprisonment in a relevant penalty provision so as to specify, in relation to the relevant offence to which it applies, that the maximum term of imprisonment to which a person is liable on summary conviction is 12 months.
- (4) The specification of a maximum period of imprisonment in a relevant power is, in relation to any offence to which it applies, to be read as a period of 12 months.
- (5) Without prejudice to subsection (4), the Scottish Ministers may by order amend a relevant power so as to increase to 12 months the maximum term of imprisonment specified in the power.
- (6) In this section, a “relevant offence” is an offence under a relevant enactment or instrument which is—
  - (a) triable either on indictment or summary complaint, and
  - (b) punishable on summary conviction with a maximum term of imprisonment of less than 12 months.
- (7) In this section—
  - a “relevant enactment” is an Act passed before this Act,
  - a “relevant instrument” is any subordinate legislation made before the passing of this Act,
  - a “relevant penalty provision” is a provision of a relevant enactment or instrument which specifies the penalties to which a person is liable on summary conviction of a relevant offence,
  - a “relevant power” is a provision of a relevant enactment which confers a power (however expressed) for subordinate legislation to make a person, as regards an offence that is triable either on indictment or summary complaint, liable on summary conviction to a maximum term of imprisonment of less than 12 months.

- (8) For the purposes of subsection (7), reference to the passing of an Act is to be construed, in the case of an Act of the Scottish Parliament (including this Act), as reference to the passing by the Parliament of the Bill for the Act.

#### **46 JP court: power to increase penalties**

- (1) The Scottish Ministers may by order amend any specification of a maximum—
- (a) term of imprisonment,
  - (b) level of fine,
  - (c) amount of caution,
- in section 7(6) or (7) of the 1995 Act.
- (2) The Scottish Ministers may by order amend any specification, in relation to the JP court, of a maximum—
- (a) term of imprisonment,
  - (b) level of fine,
- in any other enactment.
- (3) An order under subsection (1) or (2) may not make provision for—
- (a) a term of imprisonment exceeding 6 months,
  - (b) a fine exceeding level 5 on the standard scale,
  - (c) an amount of caution exceeding level 5 on the standard scale.

#### **47 Fine level**

- (1) The maximum fine to which a person is liable on summary conviction of a relevant offence is, by virtue of this subsection, the statutory maximum.
- (2) Accordingly, the specification (by reference to level 5 on the standard scale) of a maximum fine in every relevant penalty provision is, in relation to any relevant offence to which it applies, to be read subject to subsection (1).
- (3) Without prejudice to subsections (1) and (2), the Scottish Ministers may by order amend the specification of a maximum fine in a relevant penalty provision so as to specify, in relation to the relevant offence to which it applies, that the maximum fine to which a person is liable on summary conviction is the statutory maximum.
- (4) The specification (by reference to level 5 on the standard scale) of a maximum fine in a relevant power is, in relation to any offence to which it applies, to be read as the statutory maximum.
- (5) Without prejudice to subsection (4), the Scottish Ministers may by order amend the specification of a maximum fine in a relevant power so as to increase to the statutory maximum the maximum fine specified in the power.
- (6) In this section, a “relevant offence” is an offence under a relevant enactment or instrument which is—
- (a) triable either on indictment or summary complaint, and
  - (b) punishable on summary conviction with a maximum fine specified as level 5 on the standard scale.
- (7) In this section—

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a “relevant enactment” is an Act passed before this Act,

a “relevant instrument” is any subordinate legislation made before the passing of this Act,

a “relevant penalty provision” is a provision of a relevant enactment or instrument which specifies the penalties to which a person is liable on summary conviction of a relevant offence,

a “relevant power” is a provision of a relevant enactment which confers a power (however expressed) for subordinate legislation to make a person, as regards an offence that is triable either on indictment or summary complaint, liable on summary conviction to a maximum fine specified as level 5 on the standard scale.

- (8) For the purposes of subsection (7), reference to the passing of an Act is to be construed, in the case of an Act of the Scottish Parliament (including this Act), as reference to the passing by the Parliament of the Bill for the Act.

#### **48 Prescribed sum**

In section 225 (penalties: standard scale, prescribed sum and uprating) of the 1995 Act, in subsection (8), for the words “£5,000” there is substituted “£10,000”.

#### **49 Compensation orders**

- (1) In section 249 (compensation order against convicted person) of the 1995 Act—
- (a) in subsection (1), for the words from “any” in the second place where it occurs to the end there is substituted “any—
    - (a) personal injury, loss or damage caused directly or indirectly; or
    - (b) alarm or distress caused directly,

to the victim.”,
  - (b) after that subsection there is inserted—
 

“(1A) For the purposes of subsection (1) above, “victim” means—

    - (a) a person against whom; or
    - (b) a person against whose property,

the acts which constituted the offence were directed.”.
- (2) In section 251(1)(a) (review of compensation order) of that Act, for the words “or damage” there is substituted “, damage, alarm or distress”.
- (3) In section 253(1) (effect of compensation order on subsequent award of damages in civil proceedings) of that Act, for the words “or damage” there is substituted “, damage, alarm or distress”.
- (4) In section 229 (probation orders: additional requirements) of that Act—
- (a) in subsection (6), for the words from “any” in the second place where it occurs to “offence” there is substituted “the matters referred to in subsection (6A) below”,
  - (b) after that subsection there is inserted—
 

“(6A) Those matters are any personal injury, loss, damage, alarm or distress of the victim as described in section 249(1) and (1A) of this Act.”.

*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 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

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- 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.
- (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 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

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- 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
- (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—



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- (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.
  - (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.
- (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.

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- (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”.

## 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;

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- (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.
- (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;

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- (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.
- (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."

## **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.”.

### **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;

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- (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—
  - “(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).”.

## **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;

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- (b) where a compensation offer is made under section 302A(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 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.”.

*Enforcement of fines etc.*

**55 Fines enforcement officers and their functions**

After section 226 of the 1995 Act there is inserted—

*“Enforcement of fines etc.: fines enforcement officers*

**226A Fines enforcement officers**

- (1) The Scottish Ministers may authorise persons (including classes of person) to act as fines enforcement officers for any or all of the purposes of this section and sections 226B to 226H of this Act.
- (2) A FEO has the general functions of—
  - (a) providing information and advice to offenders as regards payment of relevant penalties;
  - (b) securing compliance of offenders with enforcement orders (including as varied under section 226C(1) of this Act).
- (3) Where an offender is subject to two or more relevant penalties, a FEO—
  - (a) in exercising the function conferred by subsection (2)(b) above;
  - (b) in considering whether or not to vary an enforcement order under section 226C(1) of this Act,
 shall have regard to that fact and to the total amount which the offender is liable to pay in respect of them.
- (4) Where an enforcement order as respects an offender has been made in a sheriff court district other than that in which the offender resides, a FEO for the district



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in which the offender resides may (whether or not those districts are in the same sheriffdom) take responsibility for exercising functions in relation to the order.

- (5) A FEO taking responsibility for exercising functions by virtue of subsection (4) above is to notify that fact to—
  - (a) the offender; and
  - (b) any FEO for the district in which the enforcement order was made.
- (6) Notification under subsection (5)(b) above has the effect of transferring functions in relation to the enforcement order—
  - (a) from any FEO for the district in which the order was made; and
  - (b) to a FEO for the district in which the offender resides.
- (7) The Scottish Ministers may by regulations make further provision as to FEOs and their functions.
- (8) Regulations under subsection (7) above are not made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

#### **226B Enforcement orders**

- (1) When a court grants time to pay (or further time to pay) a relevant penalty (or an instalment of it) under section 214 or 215 of this Act, the court shall make an enforcement order under this subsection in relation to payment of the penalty.
- (2) Despite subsection (1) above, a court need not make an enforcement order where it considers that it would not be appropriate to do so in the circumstances of the case.
- (3) Where, by virtue of subsection (2) above, a court does not make an enforcement order under subsection (1) above, it may subsequently make an enforcement order under that subsection in relation to payment of the penalty.
- (4) Where—
  - (a) a person has accepted (or is deemed to have accepted)—
    - (i) a fixed penalty offer under section 302(1) of this Act; or
    - (ii) a compensation offer under section 302A(1) of this Act; and
  - (b) payment (or payment of an instalment) has not been made as required by the offer,the relevant court may make an enforcement order under this subsection in relation to the payment due.
- (5) Where—
  - (a) a person is liable to pay—
    - (i) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences), or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53), which has been registered under section 71 of that Act; or
    - (ii) by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), a fixed penalty notice given under section 129 (fixed penalty notices) of that Act; and

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- (b) payment (or payment of an instalment) has not been made as required by the penalty,

the relevant court may make an enforcement order under this subsection in relation to the payment due.

- (6) Where there is transferred to a court in Scotland a fine—
  - (a) imposed by a court in England and Wales; and
  - (b) in relation to which a collection order (within the meaning of Part 4 of Schedule 5 to the Courts Act 2003 (c. 39)) has been made,

the relevant court may make an enforcement order under this subsection in relation to payment of the fine.

- (7) An enforcement order under subsection (4), (5) or (6) above may be made—
  - (a) on the oral or written application of the clerk of court; and
  - (b) without the offender being present.

- (8) An enforcement order shall—
  - (a) state the amount of the relevant penalty;
  - (b) require payment of the relevant penalty in accordance with—
    - (i) such arrangements as to the amount of the instalments by which the relevant penalty should be paid and as to the intervals at which such instalments should be paid;
    - (ii) such other arrangements,
 as the order may specify;
  - (c) provide contact details for the FEO dealing with the enforcement order;
  - (d) explain the effect of the enforcement order.

- (9) Where a court makes (or is to make) an enforcement order in relation to a fine—
  - (a) a court may not impose imprisonment—
    - (i) under section 214(4) of this Act; or
    - (ii) under section 219(1) of this Act,
 in respect of the fine;
  - (b) a court may not—
    - (i) allow further time for payment under subsection (9)(a) of section 214 of this Act; or
    - (ii) make an order under subsection (9)(b) of that section,
 in respect of the fine;
  - (c) the offender may not make an application under section 215(1) of this Act in respect of the fine.

- (10) Paragraphs (a) to (c) of subsection (9) above apply for so long as the enforcement order continues to have effect.

- (11) An enforcement order ceases to have effect if—
  - (a) the relevant penalty is paid (including by application of any proceeds of enforcement action); or
  - (b) it is revoked under section 226G(9)(a) of this Act.

### **226C Variation for further time to pay**

- (1) A FEO dealing with an enforcement order may—
  - (a) on the application of the offender; and
  - (b) having regard to the circumstances of the offender,vary the arrangements specified in the order for payment of the relevant penalty.
- (2) That is, by—
  - (a) allowing the offender further time to pay the penalty (or any instalment of it);
  - (b) allowing the offender to pay the penalty by instalments of such lesser amounts, or at such longer intervals, as those specified in the enforcement order.
- (3) An application by an offender for the purpose of subsection (1) above may be made orally or in writing.
- (4) A FEO shall notify the offender concerned of any—
  - (a) variation under subsection (1) above;
  - (b) refusal of an application for variation under that subsection.

### **226D Seizure of vehicles**

- (1) A FEO may, for the purpose mentioned in subsection (2) below, direct that a motor vehicle belonging to the offender be—
  - (a) immobilised;
  - (b) impounded.
- (2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.
- (3) For the purposes of this section—
  - (a) a vehicle belongs to an offender if it is registered under the Vehicle Excise and Registration Act 1994 (c. 22) in the offender's name;
  - (b) a reference—
    - (i) to a vehicle being immobilised is to its being fitted with an immobilisation device in accordance with regulations made under subsection (12) below;
    - (ii) to a vehicle being impounded is to its being taken to a place of custody in accordance with regulations made under that subsection;
  - (c) a direction under subsection (1) above is referred to as a “seizure order”.
- (4) A FEO shall notify the offender concerned that a seizure order has been carried out.
- (5) Where—
  - (a) a seizure order has been carried out; and
  - (b) at the end of such period as may be specified in regulations made under subsection (12) below, any part of the relevant penalty remains unpaid,

a FEO may apply to the relevant court for an order under subsection (6) below.

- (6) The court may make an order under this subsection—
- (a) for the sale or other disposal of the vehicle in accordance with regulations made under subsection (12) below;
  - (b) for any proceeds of the disposal to be applied in accordance with regulations made under that subsection in payment of or towards the unpaid amount of the relevant penalty;
  - (c) for any remainder of those proceeds to be applied in accordance with regulations made under that subsection in payment of or towards any reasonable expenses incurred by the FEO in relation to the seizure order;
  - (d) subject to paragraphs (b) and (c) above, for any balance to be given to the offender.
- (7) Where, before a vehicle which is the subject of a seizure order is disposed of—
- (a) a third party claims to own the vehicle; and
  - (b) either—
    - (i) a FEO is satisfied that the claim is valid (and that there are no reasonable grounds for believing that the claim is disputed by the offender or any other person from whose possession the vehicle was taken); or
    - (ii) the sheriff, on an application by the third party, makes an order that the sheriff is so satisfied,the seizure order ceases to have effect.
- (8) An application for the purposes of subsection (7)(b)(ii) above does not preclude any other proceedings for recovery of the vehicle.
- (9) A person commits an offence if, without lawful authority or reasonable excuse, the person removes or attempts to remove—
- (a) an immobilisation device fitted;
  - (b) a notice fixed,
- to a motor vehicle in pursuance of a seizure order.
- (10) A person guilty of an offence under subsection (9) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) A seizure order must not be made in respect of a vehicle—
- (a) which displays a valid disabled person's badge; or
  - (b) in relation to which there are reasonable grounds for believing that it is used primarily for the carriage of a disabled person.
- (12) The Scottish Ministers may make regulations for the purposes of and in connection with this section.
- (13) Regulations under subsection (12) above may, in particular, include provision—
- (a) as to circumstances in which a seizure order may (or may not) be made;
  - (b) as regards the value of a vehicle seizable compared to the amount of a relevant penalty which is unpaid;

- (c) by reference to subsection (3)(a) and (7) above or otherwise, for protecting the interests of owners of vehicles apart from offenders;
- (d) relating to subsections (3)(b), (5)(b) and (6) above;
- (e) as to the fixing of notices to vehicles to which an immobilisation device has been fitted;
- (f) as to the keeping and release of vehicles immobilised or impounded (including as to conditions of release);
- (g) as to the payment of reasonable fees, charges or other costs in relation to—
  - (i) the immobilisation or impounding of vehicles;
  - (ii) the keeping, release or disposal of vehicles immobilised or impounded.

(14) Regulations under subsection (12) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

(15) In this section—

“disabled person’s badge” means a badge issued, or having effect as if issued, under regulations made under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44);

“immobilisation device” has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984 (c. 27);

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads (except that section 189 of the Road Traffic Act 1988 (c. 52) applies for the purposes of this section as it applies for the purposes of that Act).

#### **226E Deduction from benefits**

- (1) A FEO may, for the purpose mentioned in subsection (2) below, request the relevant court to make an application under regulations made under section 24(1)(a) of the Criminal Justice Act 1991 (c. 53) for deductions as described in that section.
- (2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

#### **226F Powers of diligence**

- (1) When a court makes an enforcement order, it shall grant a warrant for civil diligence in the form prescribed by Act of Adjournal.
- (2) A warrant granted under subsection (1) above authorises a FEO to execute the types of diligence mentioned in subsection (3) below for the purpose mentioned in subsection (4) below.
- (3) The types of diligence are—
  - (a) arrestment of earnings; and
  - (b) arrestment of funds standing in accounts held at any bank or other financial institution.

- (4) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.
- (5) The types of diligence mentioned in subsection (3) above may (whatever the amount of the relevant penalty concerned) be executed by an FEO in the same manner as if authorised by a warrant granted by the sheriff in a summary cause.
- (6) However, the power of FEOs to execute the types of diligence mentioned in subsection (3) above is subject to such provision as the Scottish Ministers may by regulations make.
- (7) Provision in regulations under subsection (6) above may, in particular—
  - (a) specify circumstances in which the types of diligence mentioned in subsection (3) above are (or are not) to be executed by a FEO;
  - (b) modify the application of any enactment (including subsection (5) above) or rule of law applying in relation to those types of diligence in so far as they may be executed by a FEO.
- (8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### **226G Reference of case to court**

- (1) A FEO may refer an enforcement order to the relevant court where—
  - (a) the FEO believes that payment of a relevant penalty, or any remaining part of a relevant penalty, to which an enforcement order relates is unlikely to be obtained;
  - (b) for any other reason (including failure of the offender to co-operate with the FEO) the FEO considers it expedient to do so.
- (2) A FEO may make a reference under subsection (1) above at any time from the day after the enforcement order is made.
- (3) When making a reference under subsection (1) above, the FEO shall provide the court with a report on the circumstances of the case.
- (4) A report under subsection (3) above shall include, in particular—
  - (a) a copy of any report from a supervising officer received by the FEO under section 217(9) of this Act; and
  - (b) information about—
    - (i) the steps taken by the enforcement officer to obtain payment of or towards the relevant penalty; and
    - (ii) any effort (or lack of effort) made by the offender to make payment of or towards the penalty.
- (5) Where a reference is made under subsection (1) above, the relevant court shall enquire of the offender as to the reason why the relevant penalty (or an instalment of it) has not been paid.
- (6) Subsection (5) above does not apply where the offender is in prison.
- (7) Subsections (3) to (7) of section 216 of this Act apply in relation to subsection (5) above as they apply in relation to subsection (1) of that section.

- (8) After the court has considered—
- (a) the report provided by the FEO under subsection (3) above; and
  - (b) any information obtained by enquiry under subsection (5) above,
- the court may dispose of the case as mentioned in subsection (9) below.
- (9) That is, the court may—
- (a) revoke the enforcement order and deal with the offender as if the enforcement order had never been made;
  - (b) vary the enforcement order;
  - (c) confirm the enforcement order as previously made;
  - (d) direct the FEO to take specified steps to secure payment of or towards the relevant penalty in accordance with the enforcement order (including as varied under paragraph (b) above);
  - (e) make such other order as it thinks fit.

#### **226H Review of actions of FEO**

- (1) The offender may apply to the relevant court for review—
- (a) in relation to an enforcement order—
    - (i) of any variation under section 226C(1) of this Act;
    - (ii) of any refusal of an application for variation under that section;
  - (b) of the making of a seizure order under section 226D(1) of this Act.
- (2) An application under subsection (1) above requires to be made within 7 days of notification under section 226C(4) of this Act or (as the case may be) section 226D(4) of this Act.
- (3) On an application under subsection (1) above, the relevant court may—
- (a) confirm, vary or quash the decision of the FEO;
  - (b) make such other order as it thinks fit.

#### **226I Enforcement of fines etc.: interpretation**

- (1) In this section and sections 226A to 226H of this Act—
- “enforcement order” is to be construed in accordance with section 226B(1) and (4) to (6) of this Act;
  - “FEO” means a fines enforcement officer;
  - “offender” means the person who is liable to pay a relevant penalty;
  - “relevant court”—
    - (a) in the case of a fine or compensation order, means—
      - (i) the court which imposed the penalty; or
      - (ii) where the penalty is transferred to another court, that other court;
    - (b) in the case of another relevant penalty (apart from a penalty specified by order for the purposes of this section), means—
      - (i) the court whose clerk is specified in the notice to the offender; or
      - (ii) where the penalty is transferred to another court, that other court;

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(c) in the case of a penalty specified by order for the purposes of this section, means—

- (i) the court whose clerk is specified in the notice to the offender;
- (ii) where the penalty is transferred to another court, that other court; or
- (iii) such other court as the order may specify for those purposes;

“relevant penalty” means—

- (a) a fine;
- (b) a compensation order imposed under section 249 of this Act;
- (c) a fixed penalty offer made under section 302(1) of this Act;
- (d) a compensation offer made under section 302A(1) of this Act;
- (e) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences) or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53);
- (f) a fixed penalty notice given under section 129 (fixed penalty notices) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);
- (g) such other penalty as the Scottish Ministers may by order specify for the purposes of this section.

(2) An order specifying a penalty or a court for the purpose of this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

## **56 Recognition of EU financial penalties**

- (1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).
- (2) The provision may, in particular, confer functions—
  - (a) on the Scottish Ministers,
  - (b) on other persons.
- (3) The provision—
  - (a) must relate to fines and other financial penalties imposed by a court on conviction of an offence,
  - (b) may relate to financial penalties which are—
    - (i) accrued otherwise than on conviction of an offence, and
    - (ii) on default, enforced in the same manner as fines imposed by a court.
- (4) The provision may not relate to—
  - (a) orders for the confiscation of instrumentalities or proceeds of crime,
  - (b) orders of a civil nature which—
    - (i) arise out of a claim for damages and restitution, and



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- (ii) are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 (as amended) on jurisdiction and the recognition of judgements in civil and commercial matters.
- (5) Expressions used in subsections (3) and (4) and in the Framework Decision are to be construed in accordance with that Decision.
- (6) In this section, “the Framework Decision” is Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

#### *Breach of post-conviction orders*

### **57 Probation and community service orders**

- (1) In section 232 (probation orders: failure to comply with requirement) of the 1995 Act—
  - (a) in subsection (1), for the words “information from” there is substituted “the basis of a report made to it by”,
  - (b) after subsection (1) there is inserted—
    - “(1A) A copy of a report made under subsection (1) above shall be served on the probationer in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy, together with, where appropriate, a receipt issued by the postal operator shall be sufficient evidence of service of the copy.”.
- (2) In section 239 (community service orders: requirements) of that Act—
  - (a) in subsection (4), for the words “information from” there is substituted “the basis of a report made to it by”,
  - (b) after subsection (4) there is inserted—
    - “(4ZA) A copy of a report made under subsection (4) above shall be served on the offender in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy, together with, where appropriate, a receipt issued by the postal operator shall be sufficient evidence of service of the copy.”.

### **58 Restriction of liberty orders**

In section 245F (breach of restriction of liberty order) of the 1995 Act, after subsection (2) there is inserted—

- “(2A) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.”.