



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

2007 asp 6

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 18th January 2007 and received Royal Assent on 22nd February 2007**

An Act of the Scottish Parliament to make provision as to bail in criminal proceedings; to reform certain aspects of summary criminal procedure; to make provision in relation to solemn criminal procedure; to make provision as to maximum penalties in the summary criminal courts; to make provision for the purpose of compensation orders in favour of victims of offences; to make provision for and in relation to alternatives to prosecution; to make provision as to enforcement of financial penalties for offences; to make provision establishing the JP court and for disestablishing the district court; to provide for the inspection of the Crown Office and Procurator Fiscal Service; and for connected purposes.

## PART 1

### BAIL

#### 1 Determination of questions of bail

After section 23A of the 1995 Act there is inserted—

##### **“23B Entitlement to bail and the court's function**

- (1) Bail is to be granted to an accused person—
  - (a) except where—
    - (i) by reference to section 23C of this Act; and
    - (ii) having regard to the public interest, there is good reason for refusing bail;
  - (b) subject to section 23D of this Act.
- (2) In determining a question of bail in accordance with subsection (1) above, the court is to consider the extent to which the public interest could, if bail were granted, be safeguarded by the imposition of bail conditions.

*Status: This version of this Act contains provisions that are prospective.*

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- (3) Reference in subsections (1)(a)(ii) and (2) above to the public interest includes (without prejudice to the generality of the public interest) reference to the interests of public safety.
- (4) The court must (without prejudice to any other right of the parties to be heard) give the prosecutor and the accused person an opportunity to make submissions in relation to a question of bail.
- (5) The attitude of the prosecutor towards a question of bail (including as to bail conditions) does not restrict the court's exercise of its discretion in determining the question in accordance with subsection (1) above.
- (6) For the purpose of so determining a question of bail (including as to bail conditions), the court may request the prosecutor or the accused person's solicitor or counsel to provide it with information relevant to the question.
- (7) However, whether that party gives the court opinion as to any risk of something occurring (or any likelihood of something not occurring) is a matter for that party to decide.

### **23C Grounds relevant as to question of bail**

- (1) In any proceedings in which a person is accused of an offence, the following are grounds on which it may be determined that there is good reason for refusing bail—
  - (a) any substantial risk that the person might if granted bail—
    - (i) abscond; or
    - (ii) fail to appear at a diet of the court as required;
  - (b) any substantial risk of the person committing further offences if granted bail;
  - (c) any substantial risk that the person might if granted bail—
    - (i) interfere with witnesses; or
    - (ii) otherwise obstruct the course of justice,
 in relation to himself or any other person;
  - (d) any other substantial factor which appears to the court to justify keeping the person in custody.
- (2) In assessing the grounds specified in subsection (1) above, the court must have regard to all material considerations including (in so far as relevant in the circumstances of the case) the following examples—
  - (a) the—
    - (i) nature (including level of seriousness) of the offences before the court;
    - (ii) probable disposal of the case if the person were convicted of the offences;
  - (b) whether the person was subject to a bail order when the offences are alleged to have been committed;
  - (c) whether the offences before the court are alleged to have been committed—
    - (i) while the person was subject to another court order;
    - (ii) while the person was on release on licence or parole;

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- (iii) during a period for which sentence of the person was deferred;
- (d) the character and antecedents of the person, in particular—
  - (i) the nature of any previous convictions of the person (including convictions outwith Scotland);
  - (ii) whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise);
  - (iii) whether the person has previously breached the terms of any release on licence or parole (by committing an offence or otherwise);
  - (iv) whether the person is serving or recently has served a sentence of imprisonment in connection with a matter referred to in subparagraphs (i) to (iii) above;
- (e) the associations and community ties of the person.

### **23D Restriction on bail in certain solemn cases**

- (1) Where subsection (2) or (3) below applies, a person is to be granted bail in solemn proceedings only if there are exceptional circumstances justifying bail.
- (2) This subsection applies where the person—
  - (a) is accused in the proceedings of a violent or sexual offence; and
  - (b) has a previous conviction on indictment for a violent or sexual offence.
- (3) This subsection applies where the person—
  - (a) is accused in the proceedings of a drug trafficking offence; and
  - (b) has a previous conviction on indictment for a drug trafficking offence.
- (4) For the purposes of this section—
  - “drug trafficking offence” has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
  - “sexual offence” has the meaning given by section 210A(10) and (11) of this Act;
  - “violent offence” means any offence (other than a sexual offence) inferring personal violence.
- (5) Any reference in this section to a conviction on indictment for a violent or sexual offence or a drug trafficking offence includes—
  - (a) a conviction on indictment in England and Wales or Northern Ireland for an equivalent offence;
  - (b) a conviction in a member State of the European Union (other than the United Kingdom) which is equivalent to conviction on indictment for an equivalent offence.
- (6) Any issue of equivalence arising in pursuance of subsection (5) above is for the court to determine.
- (7) This section is without prejudice to section 23C of this Act.”.

## **2 Bail and bail conditions**

- (1) In section 24 (bail and bail conditions) of the 1995 Act—
  - (a) after subsection (2) there is inserted—

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“(2A) Whenever the court grants or refuses bail, it shall state its reasons.

(2B) Where the court—

- (a) grants bail to a person accused of a sexual offence (having the meaning given by section 210A(10) and (11) of this Act); and
- (b) does so without imposing on the accused further conditions under subsection (4)(b)(i) below,

the court shall also state why it considers in the circumstances of the case that such conditions are unnecessary.”,

- (b) in subsection (4), in paragraph (b)(ii), after the word “parade” there is inserted “ or other identification procedure ”,
- (c) in subsection (5), after paragraph (c) there is inserted—
  - “(ca) does not behave in a manner which causes, or is likely to cause, alarm or distress to witnesses;”.

(2) In section 25 (bail conditions: supplementary) of that Act—

(a) before subsection (1) there is inserted—

“(A1) When granting bail, the court shall (if the accused is present) explain to the accused in ordinary language—

- (a) the effect of the conditions imposed;
- (b) the effect of the requirement under subsection (2B) below; and
- (c) the consequences which may follow a breach of any of those conditions or that requirement.

(B1) The accused shall (whether or not the accused is present when bail is granted) be given a written explanation in ordinary language of the matters mentioned in paragraphs (a) to (c) of subsection (A1) above.

(C1) Such a written explanation may be contained in the copy of the bail order given to the accused or in another document.”,

- (b) in subsection (1), after paragraph (a) there is inserted—
  - “(aa) that breach of a condition imposed is an offence and renders the accused liable to arrest, prosecution and punishment under this Act;”,
- (c) after subsection (2A) there is inserted—

“(2B) Where the domicile of citation specified in an order granting bail ceases to be the accused’s normal place of residence, the accused must make an application under subsection (2) above within 7 days of that happening.

(2C) A person who without reasonable excuse contravenes subsection (2B) above is guilty of an offence and is liable—

- (a) on conviction in the JP court, to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 60 days or to both;
- (b) in any other case, to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.”.

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### Commencement Information

- II** S. 2 wholly in force at 10.12.2007, see s. 84 and S.S.I. 2007/479. {art. 3}, Sch. (subject to transitional provisions in art. 4)

## 3 Breach of bail conditions

- (1) In section 27 (breach of bail conditions: offences) of the 1995 Act—
- (a) in subsection (2), in paragraph (b)(ii), for the word “3” there is substituted “12”;
  - (b) after subsection (4A) there is inserted—
 

“(4B) In any proceedings in relation to an offence under subsection (1) above [<sup>F1</sup>or subsection (7) below], the fact that (as the case may be) an accused—

    - (a) was on bail;
    - (b) was subject to any particular condition of bail;
    - (c) failed to appear at a diet; or
    - (d) was given due notice of a diet,

shall, unless challenged in the manner described in paragraph (a) or (b) of subsection (4A) above, be held as admitted.”
  - (c) after subsection (6) there is inserted—
 

“(6A) Where, despite the requirement to have regard to the matters specified in paragraphs (a) to (c) of subsection (3) above, the sentence or disposal in respect of the subsequent offence is not different from that which the court would have imposed but for that subsection, the court shall state (as appropriate, by reference to those matters) the reasons for there being no difference.”
  - (d) in subsection (7)(b), for the word “2” there is substituted “5”;
  - (e) in subsection (9), for the words “The penalties provided for in subsection (2) above may” there is substituted “A penalty under subsection (2) or (7) above shall”;
  - (f) after subsection (9) there is inserted—
 

“(9A) The reference in subsection (9) above to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—

    - (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint or indictment), framing the sentences so that they have effect consecutively;
    - (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.

(9B) Subsection (9A)(b) above is subject to section 204A of this Act.”
- (2) In section 28 (breach of bail conditions: arrest of offender etc.) of that Act—
- (a) after subsection (1) there is inserted—