



# Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

## PART 3

### BAIL

#### 17 **Bail conditions: remote monitoring of restrictions on movements**

After section 24 (bail and bail conditions) of the 1995 Act insert—

##### **“24A Bail conditions: remote monitoring of restrictions on movements**

- (1) Where a court has refused to admit a person to bail, the court shall, on the application of that person—
  - (a) consider whether the imposition of a remote monitoring requirement would enable it to admit the person to bail subject to a movement restriction condition; and
  - (b) if so—
    - (i) admit the person to bail subject to such a condition (as well as such other conditions required to be imposed under section 24(4) of this Act); and
    - (ii) impose, as a further condition of bail, a remote monitoring requirement.
- (2) Where a court—
  - (a) grants bail to any person charged with or convicted of murder or rape; and
  - (b) in doing so, imposes a movement restriction condition,the court may, at its own hand, impose, as a further condition of bail, a remote monitoring requirement.
- (3) Where a court, in granting bail to a person convicted of murder or rape—
  - (a) imposes a movement restriction condition; but
  - (b) does not impose a remote monitoring requirement,

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the court shall state reasons for not imposing such a requirement.

- (4) In deciding whether to grant bail to a person referred to in paragraph (a) of subsection (2) above, the court shall disregard the availability of the power conferred by that subsection.
- (5) Where—
- (a) a remote monitoring requirement has been imposed under subsection (2) above on a person charged with murder or rape; and
  - (b) subsequently, the charge against the person is reduced,
- the court shall, on the application of the person, revoke the remote monitoring requirement unless it considers that there are exceptional circumstances justifying the continued imposition of the requirement.
- (6) An application under subsection (5) above shall be intimated immediately and in writing to the Crown Agent and the court shall, before determining it, give the prosecutor an opportunity to be heard.
- (7) Before considering whether to impose a remote monitoring requirement under subsection (1) or (2) above, the court shall give the accused and the prosecutor an opportunity to be heard.
- (8) Before imposing a remote monitoring requirement under subsection (1) or (2) above, the court shall explain to the accused in ordinary language—
- (a) the effect—
    - (i) of the requirement; and
    - (ii) of any requirement to be imposed under section 24D(3) of this Act; and
  - (b) the consequences which may follow any failure by the accused to comply with—
    - (i) the movement restriction condition in respect of which the remote monitoring requirement is to be imposed; and
    - (ii) any such requirement as is referred to in paragraph (a)(ii) above.
- (9) The court shall not impose a remote monitoring requirement under subsection (1) or (2) above unless the accused, after the court has explained to him the matters referred to in paragraphs (a) and (b) of subsection (8) above, has confirmed that he understands those matters.
- (10) Subsection (11) below applies where the court is proposing—
- (a) to impose under subsection (1) or (2) above a remote monitoring requirement where the movement restriction condition in relation to which the requirement is proposed to be imposed will require the accused to remain in a specified place or places; or
  - (b) to vary the movement restriction condition in relation to which the requirement is imposed so as to specify a different place or different places.
- (11) Before imposing the requirement or, as the case may be, varying the condition, the court shall—
- (a) obtain and consider a report by an officer of a local authority about—
    - (i) the place or places proposed to be specified; and

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- (ii) the attitude of persons likely to be affected by the requirement that the accused remain there; and
  - (b) if it considers it necessary, hear the officer who prepared the report.
- (12) The court may, for the purposes of subsection (11) above, adjourn the proceedings.
- (13) Where a court—
  - (a) imposes a remote monitoring requirement under subsection (1) or (2) above;
  - (b) revokes such a requirement; or
  - (c) varies or revokes a movement restriction condition in respect of which such a requirement has been imposed,the clerk of the court shall cause a copy of the order containing the requirement, revocation or, as the case may be, variation to be sent immediately to the monitor.
- (14) Where, in the course of monitoring in pursuance of a remote monitoring requirement imposed under subsection (1) or (2) above a person's compliance with a condition imposed on bail restricting the person's movements, the monitor becomes aware that the person has breached the condition, the monitor shall immediately notify a constable of the breach.
- (15) Where a constable arrests a person under section 28(1) of this Act on the ground that the constable suspects the person of having breached a movement restriction condition in respect of which a remote monitoring requirement has been imposed the constable shall, as soon as possible, notify the monitor of the arrest.
- (16) Nothing in subsection (1) above affects any right which a person has to appeal against a decision refusing to admit the person to bail.
- (17) However, where in a case in which an application has been made under subsection (1) above following a decision of a court to refuse to admit the applicant to bail—
  - (a) an appeal is taken against the decision; and
  - (b) the applicant is refused bail under subsection (1) above,any appeal against the refusal of bail under that subsection shall be conjoined with the appeal referred to in paragraph (a) above.
- (18) In this section and sections 24B to 24E of this Act—
  - (a) “a movement restriction condition” means, in relation to a person admitted to bail, a condition of bail imposed under section 24(4)(b) of this Act restricting the person's movements, including such a condition requiring the person to be, or not to be, in any place or description of place for, or during, any period or periods or at any time;
  - (b) “a remote monitoring requirement” means, in relation to a movement restriction condition, a requirement that compliance with the condition be remotely monitored; and
  - (c) references to the “accused” are references to any person in relation to whom a remote monitoring requirement is imposed or to be imposed under subsection (1) or (2) above.

- (19) In this section, “monitor” means, in relation to an order under this section, any person who is, or is to be, responsible for the remote monitoring of the compliance of the person in respect of whom the order is made with the condition imposed in the order restricting the person’s movements.

#### **24B Regulations as to power to impose remote monitoring requirements under section 24A**

- (1) The Scottish Ministers may by regulations prescribe—
- (a) which courts, or description or descriptions of courts, may impose remote monitoring requirements under section 24A(1) or (2) of this Act;
  - (b) what method or methods of monitoring compliance with a movement restriction condition may be specified in any such requirement by any such court; and
  - (c) the description or descriptions of persons in respect of whom such requirements may be imposed.
- (2) Regulations under subsection (1) above may make different provision in relation to the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or descriptions of courts.
- (3) Without prejudice to the generality of subsection (1) above, in relation to district courts, regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.
- (4) Regulations under subsection (1) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any remote monitoring requirements imposed under section 24A(1) or (2) in force when new regulations are made, as the Scottish Ministers consider appropriate.
- (5) Regulations under subsection (1) above shall be made by statutory instrument and a statutory instrument containing any such regulations (other than the first such regulations) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (6) The first regulations under subsection (1) above shall not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Parliament.

#### **24C Monitoring of compliance in pursuance of requirements imposed under section 24A**

- (1) Where the Scottish Ministers, in regulations under section 24B(1) of this Act, empower a court or a description of court to impose remote monitoring requirements under section 24A(1) or (2) of this Act they shall notify the court or, as the case may be, each court of that description of the person or description of persons who may be designated by that court for the purpose of monitoring the compliance with any movement restriction condition of the person in respect of whom the requirement is imposed.

- (2) A court which imposes a remote monitoring requirement under section 24A(1) or (2) of this Act shall include provisions in the requirement for making a person notified by the Scottish Ministers under subsection (1) above or a description of persons so notified responsible for monitoring the compliance of the person in respect of whom it is imposed with the movement restriction condition in respect of which it is imposed.
- (3) Where the Scottish Ministers change the person or description of persons notified by them under subsection (1) above, any court which has imposed a remote monitoring requirement under 24A(1) or (2) of this Act shall, if necessary, vary the requirement accordingly and shall notify the variation to the person in respect of whom the order was made.

#### **24D Remote monitoring**

- (1) The Scottish Ministers may make such arrangements, including contractual arrangements, as they consider appropriate with such persons, whether legal or natural, as they think fit for the remote monitoring, in pursuance of remote monitoring requirements imposed under section 24A(1) or (2), of the compliance of persons in respect of whom such requirements are imposed with the movement restriction conditions in respect of which they are imposed.
- (2) Different arrangements may be made under subsection (1) above in relation to different areas or different forms of remote monitoring.
- (3) A court imposing a remote monitoring requirement under section 24A(1) or (2) of this Act shall include in the requirement, as a further condition of bail, a requirement that the person in respect of whom it is imposed—
  - (a) shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the movement restriction condition in respect of which it is imposed to be carried out; and
  - (b) shall not tamper with or intentionally damage the device or knowingly allow it to be tampered with or intentionally damaged.
- (4) The Scottish Ministers shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of persons in respect of whom remote monitoring requirements have been imposed under section 24A(1) or (2) of this Act with the movement restriction conditions in respect of which they are imposed.
- (5) Regulations under subsection (4) above shall be made by statutory instrument and a statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### **24E Documentary evidence in proceedings for breach of bail conditions being remotely monitored**

- (1) This section applies in proceedings against a person (referred to in this section as “the accused”) for an offence under subsection (1)(b) of section 27 of this Act (failure to comply with a condition imposed on bail) where the condition referred to in that subsection is—

- (a) a movement restriction condition in respect of which a remote monitoring requirement has been imposed under section 24A(1) or (2); or
  - (b) a requirement imposed under section 24D(3)(b) of this Act.
- (2) Evidence of—
- (a) in the case referred to in subsection (1)(a) above, the presence or absence of the accused at a particular place at a particular time; or
  - (b) in the case referred to in subsection (1)(b) above, any tampering with or damage to a device worn or carried by the accused for the purpose of remotely monitoring his whereabouts,
- may, subject to subsections (5) and (6) below, be given by the production of the document or documents referred to in subsection (3) below.
- (3) That document or those documents is or are a document or documents bearing to be—
- (a) a statement automatically produced by a device specified in regulations made under section 24D(4) of this Act, by which the accused's whereabouts were remotely monitored; and
  - (b) a certificate signed by a person nominated for the purpose of this paragraph by the Scottish Ministers that the statement relates to—
    - (i) in the case referred to in subsection (1)(a) above, the whereabouts of the accused at the dates and times shown in the statement; or
    - (ii) in the case referred to in subsection (1)(b) above, any tampering with or damage to the device.
- (4) The statement and certificate mentioned in subsection (3) above shall, when produced in the proceedings, be sufficient evidence of the facts set out in them.
- (5) Neither the statement nor the certificate mentioned in subsection (3) above shall be admissible in evidence unless a copy of both has been served on the accused prior to the trial.
- (6) Without prejudice to subsection (5) above, where it appears to the court that the accused has had insufficient notice of the statement or certificate, it may adjourn the trial or make an order which it thinks appropriate in the circumstances.”.

## **18 Bail review: rights of prosecutor to be heard etc.**

- (1) The 1995 Act is amended as follows.
- (2) In section 25 (bail conditions: supplementary), after subsection (2) insert—
- “(2A) Where an application is made under subsection (2) above—
- (a) the application shall be intimated by the accused immediately and in writing to the Crown Agent; and
  - (b) the court shall, before determining the application, give the prosecutor an opportunity to be heard.”.

(3) In section 30 (bail review), after subsection (2) insert—

“(2A) Before determining an application under subsection (2) above, the court shall give the prosecutor an opportunity to be heard.

(2B) Subsection (2C) below applies where an application is made under subsection (2) above by a person convicted on indictment pending the determination of—

- (a) his appeal;
- (b) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act; or
- (c) the sentence to be imposed on, or other method of dealing with, him.

(2C) Where this subsection applies the application shall be—

- (a) intimated by the person making it immediately and in writing to the Crown Agent; and
- (b) heard not less than 7 days after the date of that intimation.”.

(4) In section 31 (bail review on prosecutor’s application), after subsection (2) insert—

“(2A) Subsection (2B) below applies to an application under subsection (1) above where the person granted bail—

- (a) was convicted on indictment; and
- (b) was granted bail pending the determination of—
  - (i) his appeal;
  - (ii) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act; or
  - (iii) the sentence to be imposed on, or other method of dealing with, him.

(2B) Where this subsection applies, the application shall be heard not more than 7 days after the day on which it is made.”.