



Bail and Release from Custody (Scotland) Act 2023

2023 asp 4

PART 1

BAIL

PROSPECTIVE

2 Determination of good reason for refusing bail

(1) The 1995 Act is amended as follows.

(2) In section 23B (entitlement to bail and the court's function)—

(a) for subsection (1) substitute—

“(1) Bail is to be granted to an accused person unless the court determines that there is good reason for refusing bail.

(1A) The court may determine that there is good reason for refusing bail only if it considers that—

(a) at least one of the grounds specified in section 23C(1) applies, and

(b) having regard to the public interest, and having considered the imposition of bail conditions in accordance with subsection (2), it is necessary to refuse bail—

(i) in the interests of public safety, including the protection of the complainer from a risk of harm, or

(ii) to prevent a significant risk of prejudice to the interests of justice.”,

(b) subsection (3) is repealed,

(c) after subsection (7) insert—

“(8) For the purposes of subsections (1A)(b)(i) and (6A)—

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Bail and Release from Custody (Scotland) Act 2023, Section 2. (See end of Document for details)

“complainer” means the person against whom the offence to which the proceedings relate is alleged to have been committed,

“harm” means physical or psychological harm,

“psychological harm” includes fear, alarm and distress.

(9) For the purposes of subsection (1A)(b)(ii), “prejudice to the interests of justice” means—

- (a) the accused person evading justice as a result of the proceedings being delayed or discontinued, or
- (b) the course of justice in the proceedings being impeded or prejudiced as a result of—
 - (i) the destruction, concealment or withholding of evidence,
 - (ii) the giving of false or misleading evidence, or
 - (iii) the quality of evidence, or its sufficiency in law, being diminished.

(10) In subsection (9)(b)(iii), the reference to the quality of evidence is to its quality in terms of completeness, accuracy and probative value.”.

(3) In section 23C (grounds relevant as to question of bail)—

- (a) in subsection (1), at the beginning of paragraph (a) insert “subject to subsection (1A),”,
- (b) after subsection (1) insert—

“(1A) When determining whether there is good reason for refusing bail in summary proceedings, the court may take account of any such risk as is mentioned in subsection (1)(a) only where—

- (a) the person has previously failed to appear at a relevant diet, or
- (b) the proceedings relate to an offence under section 27(1)(a) or 150(8).”.

(c) after subsection (2) insert—

“(3) In subsection (1A)(a), “relevant diet” means a diet of the court relating to the offence with which the person is charged—

- (a) of which the person has been given due notice, or
- (b) at which the person is required by this Act to appear.”.

Commencement Information

II S. 2 not in force at Royal Assent, see [s. 18\(2\)](#)

Status:

This version of this provision is prospective.

Changes to legislation:

There are currently no known outstanding effects for the Bail and Release from Custody (Scotland) Act 2023, Section 2.