

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

EXPLANATORY NOTES

INTRODUCTION

Part 1 - Bail

Section 5: Attitude of prosecutor after conviction

45. **Section 5** introduces new section 32A into the 1995 Act.
46. Subsection (1) of new section 32A confirms that following conviction where a question of bail is being considered by the court (including consideration of bail conditions), the prosecutor and the convicted person have a right to make submissions on the question of bail post-conviction. The traditional position has been that the Crown will not make submissions at this stage.
47. Notwithstanding this right, subsection (2) confirms that the court's discretion in relation to determining the question of bail is not restricted in any way by the attitude of the prosecutor. This is in keeping with other similar provisions in the Act.
48. Subsection (3) refers to section 245J of the 1995 Act. Section 245J details how the court decides questions of bail where a probationer or offender appears before it in respect of an apparent failure to comply with a requirement of a court disposal such as a probation order or a drug treatment and testing order. These orders will all by their nature be made after a plea of guilty or a finding of guilt. Currently under section 245J the prosecutor has the right to be heard in relation to any appeal of the court's decision on bail but not its initial determination. This amendment both clarifies that the Crown does not have a right to be heard in connection with initial bail applications under section 245J, and removes the requirement for the Crown to be heard in relation to any bail appeal arising out of that section.