



Bail etc. (Scotland) Act 1980

CHAPTER 4

ARRANGEMENT OF SECTIONS

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ELIZABETH II



Bail etc. (Scotland)

Act 1980

1980 CHAPTER 4

An Act to amend the law of Scotland relating to bail and the interim liberation of persons who have been arrested and to make provision in respect of the sittings of the sheriff and district courts. [31st January 1980]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) After the commencement of this Act, it shall not be lawful to grant bail or release for a pledge or deposit of money, and—

- (a) release on bail may be granted only on conditions which, subject to subsection (3) below, shall not include a pledge or deposit of money ;
- (b) liberation may be granted by the police under section 18, 294, 295 or 296 of the 1975 Act as amended by sections 7 to 9 of this Act.

(2) The conditions which the court or, as the case may be, the Lord Advocate imposes in granting bail shall be such as the court or the Lord Advocate considers necessary to secure that the accused—

- (a) appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice ;
- (b) does not commit an offence while on bail ;

- (c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person ; and
- (d) makes himself available for the purposes of enabling inquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged.

(3) The court or, as the case may be, the Lord Advocate may impose as one of the conditions of release on bail a requirement that the accused or a cautioner on his behalf deposits a sum of money in court, but only where the court or, as the case may be, the Lord Advocate is satisfied that the imposition of such condition is appropriate to the special circumstances of the case.

(4) In any enactment, including the following provisions of this Act and any enactment passed after this Act—

- (a) any reference to bail shall be construed as a reference to release on conditions in accordance with this Act or to conditions imposed on bail, as the context requires ;
- (b) any reference to an amount of bail fixed shall be construed as a reference to conditions, including a sum required to be deposited under subsection (3) above ;
- (c) any reference to finding bail or finding sufficient bail shall be construed as a reference to acceptance of conditions imposed or the finding of a sum required to be deposited under subsection (3) above.

(5) In this section and sections 2 to 4 of this Act, references to an accused and to appearance at a diet shall include references respectively to an appellant and to appearance at the court on the day fixed for the hearing of an appeal.

Provisions
supplementary
to s.1.

2.—(1) The court shall specify in the order granting bail, a copy of which shall be given to the accused—

- (a) the conditions imposed ; and
- (b) an address, within the United Kingdom (being the accused's normal place of residence or such other place as the court may, on cause shown, direct) which, subject to subsection (2) below, shall be his proper domicile of citation.

(2) The court may on application in writing by the accused while he is on bail alter the address specified in the order granting bail, and this new address shall, as from such date as the court

may direct, become his proper domicile of citation; and the court shall notify the accused of its decision on any application under this subsection.

(3) In this section “proper domicile of citation” means the address at which the accused may be cited to appear at any diet relating to the offence with which he is charged or an offence charged in the same proceedings as that offence or to which any other intimation or document may be sent; and any citation at or the sending of an intimation or document to the proper domicile of citation shall be presumed to have been duly carried out.

3.—(1) Subject to subsection (3) below, an accused who ^{Breach of} having been granted bail fails without reasonable excuse— ^{conditions.}

(a) to appear at the time and place appointed for any diet of which he has been given due notice; or

(b) to comply with any other condition imposed on bail; shall be guilty of an offence and liable on conviction to the penalties specified in subsection (2) below.

(2) The penalties mentioned in subsection (1) above are—

(a) a fine not exceeding £200; and

(b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) where conviction is in the sheriff court or in the High Court, not exceeding 3 months.

(3) An accused who having been granted bail in relation to solemn proceedings fails without reasonable excuse to appear at the time and place appointed for any diet of which he has been given due notice (where such diet is in respect of solemn proceedings) shall be guilty of an offence and liable on conviction on indictment to the following penalties—

(a) a fine; and

(b) imprisonment for a period not exceeding 2 years.

(4) At any time before the trial of an accused under solemn procedure for the original offence, it shall be competent—

(a) to amend the indictment to include an additional charge of an offence under this section;

(b) to include in the list of witnesses or productions relating to the original offence, witnesses or productions relating to the offence under this section.

(5) The penalties provided in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penal-

ties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(6) A court which finds an accused guilty of an offence under this section may remit the accused for sentence in respect of that offence to any court which is considering the original offence.

(7) A constable may arrest without warrant an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking, or is likely to break any condition imposed on his bail.

(8) An accused who is arrested under this section shall wherever practicable be brought before the court to which his application for bail was first made not later than in the course of the first day after his arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under section 10 of this Act:

Provided that nothing in this subsection shall prevent such person being brought before a court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 10, sitting on such day for the disposal of criminal business.

(9) Where an accused is brought before a court under subsection (8) above, the court, after hearing the parties, may—

(a) recall the order granting bail ;

(b) release the accused under the original order granting bail ; or

(c) vary the order granting bail so as to contain such conditions as the court thinks it necessary to impose to secure that the accused complies with the requirements of paragraphs (a) to (d) of section 1(2) of this Act.

(10) The same rights of appeal shall be available against any decision of the court under subsection (9) above as were available against the original order of the court relating to bail.

(11) For the purposes of this section, an extract from the minute of proceedings, containing the order granting bail and bearing to be signed by the clerk of court, shall be sufficient evidence of the making of that order and of its terms and of the acceptance by the accused of the conditions imposed under section 1 of this Act.

(12) In this section “ the original offence ” means the offence with which the accused was charged when he was granted bail or an offence charged in the same proceedings as that offence.

4.—(1) Without prejudice to section 3 of this Act, where the accused or a cautioner on his behalf has deposited a sum of money in court under section 1(3) of this Act, then—

Provisions relating to monetary conditions.

- (a) if the accused fails to appear at the time and place appointed for any diet of which he has been given due notice, the court may, on the motion of the prosecutor, immediately order forfeiture of the sum deposited:

Provided that the court, if it is satisfied that it is reasonable in all the circumstances to do so, may recall the order and direct that the money forfeited shall be refunded, and any decision of the court under this proviso shall be final and not subject to review;

- (b) if the accused fails to comply with any other condition imposed on bail, the court may, on conviction of an offence under section 3(1)(b) of this Act and on the motion of the prosecutor, order forfeiture of the sum deposited.

(2) A cautioner, who has deposited a sum of money in court under section 1(3) of this Act, shall be entitled to recover the sum deposited at any diet of the court at which the accused appears personally:

Provided that, where the accused has been charged with an offence under section 3(1)(b) of this Act, nothing in this subsection shall entitle a cautioner to recover the sum deposited unless and until—

- (a) the charge is not proceeded with; or
- (b) the accused is acquitted of the charge; or
- (c) on the accused's conviction of the offence, the court has determined not to order forfeiture of the sum deposited.

(3) The references in subsection (1)(b) above and in paragraph (c) of the proviso to subsection (2) above to conviction of an offence shall include references to the making of an order in respect of the offence under section 383 (absolute discharge) or 384 (probation) of the 1975 Act.

5. In each of sections 179 and 380 of the 1975 Act (power of court to adjourn case before sentence)—

Bail on adjournment before sentence.

- (a) there shall be inserted before the proviso the words—
“and where the court so adjourns the case it shall remand the accused in custody or on bail”;
- (b) at the end there shall be added the following subsection—

“(2) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of

his remand, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may, after hearing parties—

- (a) review the order and grant bail on such conditions as it thinks fit ; or
- (b) confirm the order.”.

Remand for inquiry into physical or mental condition.

6. In each of sections 180 and 381 of the 1975 Act (remand for inquiry into physical or mental condition)—

- (a) in subsection (2), the words “ bail shall be found by bail bond, and ”, and subsection (3) shall cease to have effect ;
- (b) at the end there shall be added the following subsection—

“ (5) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—

- (a) review the order and grant bail on such conditions as it thinks fit ; or
- (b) confirm the order.”

Interim liberation by constable of person charged with offence against a person under 17 years.

7.—(1) In section 18 of the 1975 Act (power of constables to take offenders into custody), for subsection (2) there shall be substituted the following subsections—

“ (2) Where a person has been arrested under this section, the officer in charge of a police station may—

- (a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time ; or
- (b) liberate him without any such undertaking ; or
- (c) refuse to liberate him ; and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.

(3) A person in breach of an undertaking given by him under subsection (2)(a) above without reasonable excuse shall be guilty of an offence and liable to the following penalties—

- (a) a fine not exceeding £200 ; and
- (b) imprisonment for a period not exceeding 3 months.

(4) The penalties provided for in subsection (3) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (2)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.”.

(2) In section 294 of the 1975 Act (power of constables to take offenders into custody), for subsection (2) there shall be substituted the following subsections—

“ (2) Where a person has been arrested under this section, the officer in charge of a police station may—

- (a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time ; or
- (b) liberate him without any such undertaking ; or
- (c) refuse to liberate him ; and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.

(3) A person in breach of an undertaking given by him under subsection (2)(a) above without reasonable excuse shall be guilty of an offence and liable to the following penalties—

- (a) a fine not exceeding £200 ; and
- (b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days ; or

(ii) where conviction is in the sheriff court, not exceeding 3 months.

(4) The penalties provided for in subsection (3) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is

mentioned in subsection (2)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.”.

8. For section 295 of the 1975 Act (chief constable may in certain circumstances accept bail) there shall be substituted the following section—

“Interim liberation by officer in charge of police station.

295.—(1) Where a person has been arrested and charged with an offence which may be tried summarily, the officer in charge of a police station may—

- (a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time ; or
- (b) liberate him without any such undertaking ; or
- (c) refuse to liberate him, and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.

(2) A person in breach of an undertaking given by him under subsection (1) above without reasonable excuse shall be guilty of an offence and liable on summary conviction to the following penalties—

- (a) a fine not exceeding £200 ; and
- (b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days ; or

(ii) where conviction is in the sheriff court, not exceeding 3 months.

(3) Subsections (4) and (5) of section 294 of this Act shall, subject to any necessary modifications, apply for the purposes of this section as they apply for the purposes of that section.”.

9. In section 296 of the 1975 Act (police liberation or detention of children arrested)—

- (a) in subsection (1), for the word “ obligation ” there shall be substituted the word “ undertaking ” and for the words from “ or on bail ” to “ unless ” there shall be substituted “ ; and such undertaking shall be in writing, signed by the child or the parent or guardian as the

Interim liberation by officer in charge of police station.

Police liberation or detention of children arrested.

case may be, and certified by the said officer ; and the said officer shall so liberate the child unless—” ;

- (b) at the end there shall be added the following subsections—

“ (5) Any person, who without reasonable excuse is in breach of an undertaking entered into by him under subsection (1) above after having been given due notice of the time and place of the diet (including any continuation of the diet), shall be guilty of an offence, and liable on summary conviction in addition to any other penalty which it is competent for the court to impose on him, to a fine not exceeding £200.

(6) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1) above and bearing to be signed and certified, shall be sufficient evidence of the undertaking given by the accused.”.

10.—(1) Notwithstanding any enactment or rule of law, a sheriff court or a district court—

Sittings of sheriff and district courts.

- (a) shall not be required to sit on any Saturday or Sunday or on a day which by virtue of subsection (2) or (3) below is a court holiday ; but

(b) may sit on any day for the disposal of criminal business.

(2) A sheriff principal may in an order made under section 17(1)(b) of the Sheriff Courts (Scotland) Act 1971 prescribe in respect of criminal business not more than 10 days (other than Saturdays and Sundays) in a calendar year as court holidays in the sheriff courts within his jurisdiction. 1971 c. 58.

(3) Notwithstanding section 2(1) of the District Courts (Scotland) Act 1975, a sheriff principal may, after consultation with the appropriate district or islands council, prescribe not more than 10 days (other than Saturdays and Sundays) in a calendar year as court holidays in the district courts within his jurisdiction. 1975 c. 20.

(4) A sheriff principal may in pursuance of subsection (2) or (3) above prescribe different days as court holidays in relation to different sheriff or district courts.

11.—(1) In this Act—

Interpretation.

“ the 1975 Act ” means the Criminal Procedure (Scotland) Act 1975 ; 1975 c. 21.

“ constable ” means a constable within the meaning of the Police (Scotland) Act 1967 acting in the course of his duties ; 1967 c. 77.

“ diet ” includes any continuation of a diet.

(2) Except where the context otherwise requires, expressions used in this Act and in the 1975 Act shall have the same meanings in this Act as in that Act.

Transitional provision, consequential amendments and repeals.

12.—(1) A provision contained in any of sections 1 to 9 of this Act, and any related amendment or repeal provided for in Schedule 1 or 2 to this Act, shall not apply in relation to bail granted or release authorised before the coming into force of that provision.

(2) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Act.

(3) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Short title, commencement and extent.

13.—(1) This Act may be cited as the *Bail etc. (Scotland) Act 1980*.

(2) This Act (except this section) shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument.

(3) Any order under subsection (2) above may make such transitional provision as appears to the Secretary of State to be expedient in connection with the provisions thereby brought into force.

(4) This Act extends to Scotland only.

SCHEDULES

SCHEDULE 1

Section 12(2).

CONSEQUENTIAL AMENDMENTS

The Licensing (Scotland) Act 1903 (c.25)

1. In section 70(1) (penalties for drunkenness, riotous behaviour and other offences involving drunkenness)—

(a) in the first paragraph after “custody” where it occurs for the second time insert “, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the Bail etc. (Scotland) Act 1980,”;

(b) at the end of the first paragraph insert—

“ Provided that nothing in this paragraph of this subsection shall prevent such person being brought before the court on a Saturday, a Sunday or a court holiday prescribed for that court under the said section 10 where the court is in pursuance of that enactment sitting on such day for the disposal of criminal business.”.

The District Courts (Scotland) Act 1975 (c.20)

2. In section 2(1) (district of, and exercise of jurisdiction by, district court), after “sits, and” insert—

“ subject to section 10 of the Bail etc. (Scotland) Act 1980 (sittings of sheriff and district courts)”.

The Criminal Procedure (Scotland) Act 1975 (c.21)

3. In section 26(2) (bail competent before committal), for the words from “liberation” to “him” substitute “bail”.

4. In section 30(2) (application for review), for “at a lower amount” substitute “on different conditions”.

5. In section 180(2) (remand for inquiry into physical or mental condition), for “bond” wherever it occurs substitute “order granting bail”.

6. In section 299(2) (application for review), for “at a lower amount” substitute “on different conditions”.

7. In section 321(3) (warrants of apprehension and search), for “public or local holiday” substitute “Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the Bail etc. (Scotland) Act 1980:

Provided that nothing in this subsection shall prevent such person being brought before the court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 10, sitting on such day for the disposal of criminal business.”.

SCH. 1

8. In section 337(d) (plea of not guilty), for “without” to the end substitute “if he is not granted bail or until the accused or a cautioner on his behalf has deposited a sum of money in court where such deposit has been required as a condition of release on bail under section 1(3) of the Bail etc. (Scotland) Act 1980 ;”.

9. In section 381(2) (remand for inquiry into physical or mental condition), for “bond” wherever it occurs substitute “order granting bail”.

10. In section 444(5) (manner and time of appeal), for “interim liberation” substitute “bail”.

11. In section 446 (procedure where appellant in custody)—

(a) for “interim liberation” and “liberation” wherever they occur substitute “bail” ;

(b) in each of subsections (2) and (3), for “amount of caution fixed” substitute “conditions imposed”.

12. In section 448(8) (adjustment and signature of case), for “interim liberation” substitute “bail”.

13. In section 452(5) (hearing of appeal), for “interim liberation” substitute “bail”.

14. In section 462(1) (interpretation), for the definition of “bail” substitute “‘bail’ means release of an accused or an appellant on conditions, or conditions imposed on bail, as the context requires ;”.

15. In paragraph 4 of Schedule 3, after “day” wherever it occurs insert “, not including a Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the Bail etc. (Scotland) Act 1980.”.

SCHEDULE 2

Section 12(3).

REPEALS

Chapter	Short Title	Extent of Repeal
3 Edw. 7. c. 25.	The Licensing (Scotland) Act 1903.	In section 70(1), in the first paragraph, the word "lawful".
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	Section 29. Section 30(5). Section 34. Section 36. In section 180, in subsection (2) the words "bail shall be found by bail bond, and," and subsection (3). In section 296(1) the words from "or on bail" to the second "hearing of the charge". Section 299(5). Section 301. Section 302. Section 303(2) and (3). In section 321(3) the word "lawful". In section 337(a) the word "or". Section 337(e). Section 338(d). In section 381, in subsection (2) the words "bail shall be found by bail bond, and", and subsection (3). In section 446, in subsection (1) the words "as to caution or otherwise" and "or may dispense with further consignment or caution". In paragraph 4 of Schedule 3 the word "lawful" wherever it occurs.

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