



# Criminal Justice (Scotland) Act 1995

## 1995 CHAPTER 20

### PART I

#### THE COURSE OF JUSTICE

##### *Bail*

#### **1 Bail conditions**

For subsection (2) of section 1 of the Bail etc. (Scotland) Act 1980 (release on bail subject to conditions) there shall be substituted the following subsections—

“(2) In granting bail the court or, as the case may be, the Lord Advocate shall impose on the accused—

- (a) the standard conditions; and
- (b) such further conditions as the court or, as the case may be, the Lord Advocate considers necessary to secure—
  - (i) that the standard conditions are observed; and
  - (ii) that the accused makes himself available for the purpose of participating in an identification parade or of enabling any print, impression or sample to be taken from him.

(2A) The standard conditions referred to in subsection (2) above are conditions 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 purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged.”.

## 2 Breach of bail conditions

- (1) Section 3 of the Bail etc. (Scotland) Act 1980 (breach of bail conditions) shall be amended as follows.
- (2) In subsection (1), after the word “shall” there shall be inserted “, subject to subsection (2A) below,”.
- (3) In subsection (2)(a), for the words “£200” there shall be substituted “level 3 on the standard scale”.
- (4) After subsection (2) there shall be inserted the following subsections—
  - “(2A) Where, and to the extent that, the failure referred to in subsection (1)(b) above consists in the accused having committed an offence while on bail (in this section referred to as “the subsequent offence”), he shall not be guilty of an offence under that subsection but, subject to subsection (2B) below, the court which sentences him for the subsequent offence shall, in determining the appropriate sentence or disposal for that offence, have regard to—
    - (a) the fact that the offence was committed by him while on bail and the number of bail orders to which he was subject when the offence was committed;
    - (b) any previous conviction of the accused of an offence under subsection (1)(b) above; and
    - (c) the extent to which the sentence or disposal in respect of any previous conviction of the accused differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.
  - (2B) The court shall not, under subsection (2A) above, have regard to the fact that the subsequent offence was committed while the accused was on bail unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.
  - (2C) Where the maximum penalty in respect of the subsequent offence is specified by or by virtue of any enactment, that maximum penalty shall, for the purposes of the court’s determination, by virtue of subsection (2A) above, of the appropriate sentence or disposal in respect of that offence, be increased—
    - (a) where it is a fine, by the amount for the time being equivalent to level 3 on the standard scale; and
    - (b) where it is a period of imprisonment—
      - (i) as respects a conviction in the High Court or the sheriff court, by 6 months; and
      - (ii) as respects a conviction in the district court, by 60 days, notwithstanding that the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
  - (2D) Where the sentence or disposal in respect of the subsequent offence is, by virtue of subsection (2A) above, different from that which the court would have imposed but for that subsection, the court shall state the extent of and the reasons for that difference.”.

### **3 No bail in homicide or rape proceedings after previous conviction of such offences**

After section 28 of the Criminal Procedure (Scotland) Act 1975 (in this Act referred to as “the 1975 Act”) there shall be inserted the following section—

#### **“28A No bail for persons charged with or convicted of homicide or rape after previous conviction of such offences**

(1) Notwithstanding sections 26 to 33 and 238 of this Act, a person who in any proceedings has been charged with or convicted of—

- (a) attempted murder;
- (b) culpable homicide;
- (c) rape; or
- (d) attempted rape,

in circumstances where this section applies shall not be granted bail in those proceedings.

(2) This section applies where—

- (a) the person has previously been convicted by or before a court in any part of the United Kingdom of any offence specified in subsection (1) above or of murder or manslaughter; and
- (b) in the case of a previous conviction of culpable homicide or of manslaughter—
  - (i) he was sentenced to imprisonment or, if he was then a child or young person, to detention under any of the relevant enactments;
  - (ii) a hospital order was imposed in respect of him;
  - (iii) an order having the same effect as a hospital order was made in respect of him under section 174ZC(2)(a) of this Act; or
  - (iv) an order having equivalent effect to an order referred to in subparagraph (ii) or (iii) above has been made in respect of him by a court in England and Wales.

(3) This section applies whether or not an appeal is pending against conviction or sentence or both.

(4) In this section—

“conviction” includes—

- (a) a finding that a person is not guilty by reason of insanity;
- (b) a finding under section 174ZA(2) of this Act;
- (c) a finding under section 4A(3) of the Criminal Procedure (Insanity) Act 1964 (cases of unfitness to plead) that a person did the act or made the omission charged against him; and
- (d) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally;

and “convicted” shall be construed accordingly; and

“the relevant enactments” means—

- (a) as respects Scotland, sections 205 and 206 of this Act;

- (b) as respects England and Wales, section 53(2) of the Children and Young Persons Act 1933; and
- (c) as respects Northern Ireland, section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968.”.

#### 4 **Right of prosecutor to seek review of grant of bail**

After each of sections 30 and 299 of the 1975 Act there shall be inserted the following section as, respectively, section 30A and section 299A—

“ **Application by prosecutor for review of court’s decision to grant bail**

- (1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.
- (2) On receipt of an application under subsection (1) above the court shall—
  - (a) intimate the application to the person granted bail;
  - (b) fix a diet for hearing the application and cite that person to attend the diet; and
  - (c) where it considers that the interests of justice so require, grant warrant to arrest that person.
- (3) On hearing an application under subsection (1) above the court may—
  - (a) withdraw the grant of bail and remand the person in question in custody; or
  - (b) grant bail, or continue the grant of bail, either on the same or on different conditions.
- (4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.”.

#### 5 **Bail pending appeal**

- (1) Section 238 of the 1975 Act (admission of appellant to bail) shall be amended as follows.
- (2) In subsection (1), at the beginning there shall be inserted “Subject to subsection (1A) below,”.
- (3) After subsection (1) there shall be inserted the following subsection—
 

“(1A) The High Court shall not admit a convicted person to bail under subsection (1) above unless—

  - (a) where he is the appellant and has not lodged a note of appeal in accordance with section 233(1)(a) of this Act, the application for bail states reasons why it should be granted and sets out the proposed grounds of appeal; or
  - (b) where the Lord Advocate is the appellant, the application for bail states reasons why it should be granted;

and, in either case, the High Court considers there to be exceptional circumstances justifying admitting the convicted person to bail.”.