



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART III

#### BAIL

#### [<sup>F1</sup>22A Consideration of bail on first appearance

- (1) On the first occasion on which—
  - (a) a person accused on petition is brought before the sheriff prior to committal until liberated in due course of law; or
  - (b) a person charged on complaint with an offence is brought before a judge having jurisdiction to try the offence,the sheriff or, as the case may be, the judge shall, after giving that person and the prosecutor an opportunity to be heard and within the period specified in subsection (2) below, either admit or refuse to admit that person to bail.
- (2) That period is the period of 24 hours beginning with the time when the person accused or charged is brought before the sheriff or judge.
- (3) If, by the end of that period, the sheriff or judge has not admitted or refused to admit the person accused or charged to bail, then that person shall be forthwith liberated.
- (4) This section applies whether or not the person accused or charged is in custody when that person is brought before the sheriff or judge.]

#### Textual Amendments

**F1** S. 22A inserted before s. 23 (9.8.2000) by 2000 asp 9, s. 1

#### 23 Bail applications.

- (1) Any person accused on petition of a crime <sup>F2</sup>. . . shall be entitled immediately, on any [<sup>F3</sup>(other than the first)]occasion on which he is brought before the sheriff prior to his

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committal until liberated in due course of law, to apply to the sheriff for bail, and the prosecutor shall be entitled to be heard against any such application.

- (2) The sheriff shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.
- (3) Where an accused is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.
- (4) Where bail is refused before committal until liberation in due course of law on an application under subsection (1) above, the application for bail may be renewed after such committal.
- (5) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been committed until liberation in due course of law for any crime or offence,<sup>F4</sup> . . . and having given the prosecutor an opportunity to be heard, admit or refuse to admit the person to bail.
- [<sup>F5</sup>(6) Any person charged on complaint with an offence shall, on any (other than the first) occasion on which he is brought before a judge having jurisdiction to try the offence, be entitled to apply to the judge for bail and the prosecutor shall be entitled to be heard against any such application.]
- (7) An application under subsection (5) or (6) above shall be disposed of within 24 hours after its presentation to the judge, failing which the accused shall be forthwith liberated.
- (8) This section applies whether or not the accused is in custody at the time he appears for disposal of his application.

#### Textual Amendments

- F2** Words in s. 23(1) repealed (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(1)(a)(i)**
- F3** Words in s. 23(1) inserted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(1)(a)(ii)**
- F4** Words in s. 23(5) repealed (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(1)(b)**
- F5** S. 23(6) substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(1)(c)**

#### [<sup>F6</sup>23A Bail and liberation where person already in custody

- (1) A person may be admitted to bail under section 22A or 23 of this Act although in custody—
  - (a) having been refused bail in respect of another crime or offence; or
  - (b) serving a sentence of imprisonment.
- (2) A decision to admit a person to bail by virtue of subsection (1) above does not liberate the person from the custody mentioned in that subsection.
- (3) The liberation under section 22A(3) or 23(7) of this Act of a person who may be admitted to bail by virtue of subsection (1) above does not liberate that person from the custody mentioned in that subsection.
- (4) In subsection (1) above, “another crime or offence” means a crime or offence other than that giving rise to the consideration of bail under section 22A or 23 of this Act.]

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### Textual Amendments

**F6** S. 23A inserted (9.8.2000) by [2000 asp 9, s. 2](#)

VALID FROM 10/12/2007

### [<sup>F7</sup>23B Entitlement to bail and the court's function

- (1) Bail is to be granted to an accused person—
  - (a) except where—
    - (i) by reference to section 23C of this Act; and
    - (ii) having regard to the public interest, there is good reason for refusing bail;
  - (b) subject to section 23D of this Act.
- (2) In determining a question of bail in accordance with subsection (1) above, the court is to consider the extent to which the public interest could, if bail were granted, be safeguarded by the imposition of bail conditions.
- (3) Reference in subsections (1)(a)(ii) and (2) above to the public interest includes (without prejudice to the generality of the public interest) reference to the interests of public safety.
- (4) The court must (without prejudice to any other right of the parties to be heard) give the prosecutor and the accused person an opportunity to make submissions in relation to a question of bail.
- (5) The attitude of the prosecutor towards a question of bail (including as to bail conditions) does not restrict the court's exercise of its discretion in determining the question in accordance with subsection (1) above.
- (6) For the purpose of so determining a question of bail (including as to bail conditions), the court may request the prosecutor or the accused person's solicitor or counsel to provide it with information relevant to the question.
- (7) However, whether that party gives the court opinion as to any risk of something occurring (or any likelihood of something not occurring) is a matter for that party to decide.

### Textual Amendments

**F7** Ss. 23B-23D inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\), ss. 1, 84; S.S.I. 2007/479, art. 3\(1\), Sch.](#) (as amended by [S.S.I. 2007/527](#))

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### [<sup>F7</sup>23C Grounds relevant as to question of bail

- (1) In any proceedings in which a person is accused of an offence, the following are grounds on which it may be determined that there is good reason for refusing bail—
  - (a) any substantial risk that the person might if granted bail—
    - (i) abscond; or
    - (ii) fail to appear at a diet of the court as required;
  - (b) any substantial risk of the person committing further offences if granted bail;
  - (c) any substantial risk that the person might if granted bail—
    - (i) interfere with witnesses; or
    - (ii) otherwise obstruct the course of justice, in relation to himself or any other person;
  - (d) any other substantial factor which appears to the court to justify keeping the person in custody.
- (2) In assessing the grounds specified in subsection (1) above, the court must have regard to all material considerations including (in so far as relevant in the circumstances of the case) the following examples—
  - (a) the—
    - (i) nature (including level of seriousness) of the offences before the court;
    - (ii) probable disposal of the case if the person were convicted of the offences;
  - (b) whether the person was subject to a bail order when the offences are alleged to have been committed;
  - (c) whether the offences before the court are alleged to have been committed—
    - (i) while the person was subject to another court order;
    - (ii) while the person was on release on licence or parole;
    - (iii) during a period for which sentence of the person was deferred;
  - (d) the character and antecedents of the person, in particular—
    - (i) the nature of any previous convictions of the person (including convictions outwith Scotland);
    - (ii) whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise);
    - (iii) whether the person has previously breached the terms of any release on licence or parole (by committing an offence or otherwise);
    - (iv) whether the person is serving or recently has served a sentence of imprisonment in connection with a matter referred to in subparagraphs (i) to (iii) above;
  - (e) the associations and community ties of the person.]

#### Textual Amendments

**F7** Ss. 23B-23D inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 1, 84**; [S.S.I. 2007/479](#), **art. 3(1)**, [Sch.](#) (as amended by [S.S.I. 2007/527](#))

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### 23D Restriction on bail in certain solemn cases

- (1) Where subsection (2) or (3) below applies, a person is to be granted bail in solemn proceedings only if there are exceptional circumstances justifying bail.
- (2) This subsection applies where the person—
  - (a) is accused in the proceedings of a violent or sexual offence; and
  - (b) has a previous conviction on indictment for a violent or sexual offence.
- (3) This subsection applies where the person—
  - (a) is accused in the proceedings of a drug trafficking offence; and
  - (b) has a previous conviction on indictment for a drug trafficking offence.
- (4) For the purposes of this section—
 

“drug trafficking offence” has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995 (c. 43);

“sexual offence” has the meaning given by section 210A(10) and (11) of this Act;

“violent offence” means any offence (other than a sexual offence) inferring personal violence.
- (5) Any reference in this section to a conviction on indictment for a violent or sexual offence or a drug trafficking offence includes—
  - (a) a conviction on indictment in England and Wales or Northern Ireland for an equivalent offence;
  - (b) a conviction in a member State of the European Union (other than the United Kingdom) which is equivalent to conviction on indictment for an equivalent offence.
- (6) Any issue of equivalence arising in pursuance of subsection (5) above is for the court to determine.
- (7) This section is without prejudice to section 23C of this Act.]

#### Textual Amendments

- F7** Ss. 23B-23D inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 1, 84](#); [S.S.I. 2007/479](#), [art. 3\(1\)](#), [Sch.](#) (as amended by [S.S.I. 2007/527](#))

### 24 Bail and bail conditions.

- (1) All crimes and offences <sup>F8</sup> . . . are bailable.
- (2) Nothing in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.
- (3) 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 (6) below, shall not include a pledge or deposit of money;

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- (b) liberation may be granted by the police under section 21, 22 or 43 of this Act.
- (4) 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.
- (5) The standard conditions referred to in subsection (4) 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; <sup>F9</sup> . . .
  - (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<sup>F10</sup>; and
  - (e) where the (or an) offence in respect of which he is admitted to bail is one to which section 288C of this Act applies, does not seek to obtain, otherwise than by way of a solicitor, any precognition of or statement by the complainer in relation to the subject matter of the offence.]
- (6) 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.
- (7) In any enactment, including 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 (6) 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 (6) above.
- <sup>F11</sup>(7A) In subsection (5)(e) above, “complainer” has the same meaning as in section 274 of this Act.]
- (8) In this section and sections 25 and 27 to 29 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.

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#### Textual Amendments

- F8** Words in s. 24(1) repealed (9.8.2000) by 2000 asp 9, s. 3(1)
- F9** Word in s. 24(5) repealed (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 5(1)(a); S.S.I. 2002/443, art. 3
- F10** S. 24(5)(e) and preceding word inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 5(1)(b); S.S.I. 2002/443, art. 3
- F11** S. 24(7A) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 5(2); S.S.I. 2002/443, art. 3

### 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—
- 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
  - if so—
    - 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
    - impose, as a further condition of bail, a remote monitoring requirement.
- (2) Where a court—
- grants bail to any person charged with or convicted of murder or rape; and
  - 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—
- imposes a movement restriction condition; but
  - does not impose a remote monitoring requirement,
- 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 remote monitoring requirement has been imposed under subsection (2) above on a person charged with murder or rape; and
  - 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.

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- (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
    - (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.



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- (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

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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—

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- (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.

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- (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.

## [<sup>F12</sup>24A Bail: extradition proceedings

- (1) In the application of the provisions of this Part by virtue of section 9(2) or 77(2) of the Extradition Act 2003 (judge’s powers at extradition hearing), those provisions apply with the modifications that—
- (a) references to the prosecutor are to be read as references to a person acting on behalf of the territory to which extradition is sought;
  - (b) the right of the Lord Advocate mentioned in section 24(2) of this Act applies to a person subject to extradition proceedings as it applies to a person charged with any crime or offence;
  - (c) the following do not apply—
    - (i) paragraph (b) of section 24(3); and
    - (ii) subsection (3) of section 30; and
  - (d) sections 28(1) and 33 apply to a person subject to extradition proceedings as they apply to an accused.
- (2) Section 32 of this Act applies in relation to a refusal of bail, the amount of bail or a decision to allow bail or ordain appearance in proceedings under this Part as the Part applies by virtue of the sections of that Act of 2003 mentioned in subsection (1) above.
- (3) The Scottish Ministers may, by order, for the purposes of section 9(2) or 77(2) of the Extradition Act 2003 make such amendments to this Part as they consider necessary or expedient.
- (4) The order making power in subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.]

### Textual Amendments

**F12** S. 24A inserted (1.1.2004) by Extradition Act 2003 (c. 41), ss. 199, 221; S.I. 2003/3103, art. 2 (subject to arts. 3-5)

## 25 Bail conditions: supplementary.

- (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.

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(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.

[<sup>F13</sup>(4) In this section, references to the court (other than in subsection (2A)) shall, in relation to a person who has been admitted to bail by the Lord Advocate, be read as if they were references to the Lord Advocate.]

**Textual Amendments**

**F13** S. 25(4) inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 6](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

VALID FROM 01/02/2005

[<sup>F14</sup>**25A Failure to accept conditions of bail under section 65(8C): continued detention of accused**

An accused who—

- (a) is, by virtue of subsection (4) of section 65 of this Act, entitled to be admitted to bail; but
- (b) fails to accept any of the conditions imposed by the court on bail under subsection (8C) of that section,

shall continue to be detained under the committal warrant for so long as he fails to accept any of those conditions.]

**Textual Amendments**

**F14** S. 25A inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 7](#); S.S.I. 2004/405, [art. 2](#) Sch. 1 (subject to arts. 3-5)

<sup>F15</sup>**26** .....

**Textual Amendments**

**F15** S. 26 repealed (9.8.2000) by [2000 asp 9](#), s. 3(2)

**27 Breach of bail conditions: offences.**

(1) Subject to subsection (7) below, an accused who having been granted bail fails without reasonable excuse—

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

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- (b) to comply with any other condition imposed on bail, shall, subject to subsection (3) below, 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 level 3 on the standard scale; and
  - (b) imprisonment for a period—
    - (i) where conviction is in the district court, not exceeding 60 days; or
    - (ii) in any other case, not exceeding 3 months.
- (3) 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 (4) 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.
- (4) The court shall not, under subsection (3) 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.
- [<sup>F16</sup>(4A) The fact that the subsequent offence was committed while the accused was on bail shall, unless challenged—
- (a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or
  - (b) in summary proceedings, by preliminary objection before his plea is recorded, be held as admitted.]
- (5) 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 (3) 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.
- (6) Where the sentence or disposal in respect of the subsequent offence is, by virtue of subsection (3) 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.

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- (7) 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.
- (8) 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.
- (9) The penalties provided for 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 penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (10) 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.
- (11) 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.

#### Textual Amendments

**F16** S. 27(4A) inserted (4.7.1996) by 1996 c. 25, s. 73(2)

## 28 Breach of bail conditions: arrest of offender, etc.

- (1) 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.
- (2) 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, subject to subsection (3) below, a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act.
- (3) Nothing in subsection (2) above shall prevent an accused 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 8, sitting on such day for the disposal of criminal business.
- (4) Where an accused is brought before a court under subsection (2) or (3) 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

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- (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 24(5) of this Act.
- (5) The same rights of appeal shall be available against any decision of the court under subsection (4) above as were available against the original order of the court relating to bail.
- (6) For the purposes of this section and section 27 of this Act, 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 24 of this Act.

## **29 Bail: monetary conditions.**

- (1) Without prejudice to section 27 of this Act, where the accused or a cautioner on his behalf has deposited a sum of money in court under section 24(6) of this Act, then—
  - (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;
  - (b) if the accused fails to comply with any other condition imposed on bail, the court may, on conviction of an offence under section 27(1)(b) of this Act and on the motion of the prosecutor, order forfeiture of the sum deposited.
- (2) If the court is satisfied that it is reasonable in all the circumstances to do so, it may recall an order made under subsection (1)(a) above and direct that the money forfeited shall be refunded, and any decision of the court under this subsection shall be final and not subject to review.
- (3) A cautioner, who has deposited a sum of money in court under section 24(6) of this Act, shall be entitled, subject to subsection (4) below, to recover the sum deposited at any diet of the court at which the accused appears personally.
- (4) Where the accused has been charged with an offence under section 27(1)(b) of this Act, nothing in subsection (3) above 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.
- (5) The references in subsections (1)(b) and (4)(c) above to conviction of an offence shall include references to the making of an order in respect of the offence under section 246(3) of this Act.

## **30 Bail review.**

- (1) This section applies where a court has refused to admit a person to bail or, where a court has so admitted a person, the person has failed to accept the conditions imposed or that a sum required to be deposited under section 24(6) of this Act has not been so deposited.
- (2) A court shall, on the application of any person mentioned in subsection (1) above, have power to review its decision to admit to bail or its decision as to the conditions



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imposed and may, on cause shown, admit the person to bail or, as the case may be, fix bail on different conditions.

- (3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.
- (4) Nothing in this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the conditions imposed.

### **31 Bail review on prosecutor’s application.**

- (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.

### **32 Bail appeal.**

- (1) <sup>F17</sup>Where, in any case, bail] is refused or where the <sup>F18</sup>accused] is dissatisfied with the amount of bail fixed, he may appeal to the High Court which may, in its discretion order intimation to the Lord Advocate or, as the case may be, the prosecutor.
- (2) Where, in any case, <sup>F19</sup>. . . bail is granted, or, in summary proceedings an accused is ordained to appear, the public prosecutor, if dissatisfied—
  - (a) with the decision allowing bail;
  - (b) with the amount of bail fixed; or
  - (c) in summary proceedings, that the accused has been ordained to appear, may appeal to the High Court, and the <sup>F18</sup>accused] shall not be liberated, subject to subsection (7) below, until the appeal by the prosecutor is disposed of.
- (3) Written notice of appeal shall be immediately given to the opposite party by a party appealing under this section.
- (4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of parties as shall seem just.
- (5) Where an <sup>F18</sup>accused] in an appeal under this section is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord

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Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the [F18accused's] age for trial or sentence.

- (6) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.
- (7) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the [F18accused] to whom bail has been granted shall, if the bail fixed has been found by him, be liberated after 72 hours from the granting of [F20bail], whether the appeal has been disposed of or not, unless the High Court grants an order for his further detention in custody.
- (8) In computing the period mentioned in subsection (7) above, Sundays and public holidays, whether general or court holidays, shall be excluded.
- (9) When an appeal is taken under this section by the prosecutor in summary proceedings against the fact that the accused has been ordained to appear, subsections (7) and (8) above shall apply as they apply in the case of an appeal against the granting of bail or the amount fixed.
- (10) Notice to the governor of the prison of the issue of an order such as is mentioned in subsection (7) above within the time mentioned in that subsection bearing to be sent by the Clerk of Justiciary or the Crown Agent shall be sufficient warrant for the detention of the [F18accused] pending arrival of the order in due course of post.

#### Textual Amendments

**F17** Words in s. 32(1) substituted (9.8.2000) by 2000 asp 9, s. 4

**F18** Words in s. 32(1)(2)(5)(7)(10) substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(2)(a)**

**F19** Words in s. 32(2) repealed (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(2)(b)**

**F20** Words in s. 32(7) substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(2)(c)**

VALID FROM 10/12/2007

#### [F21] 32A Bail after conviction: prosecutor's attitude

- (1) Where—
  - (a) a person has been convicted in any proceedings of an offence; and
  - (b) a question of bail (including as to bail conditions) subsequently arises in the proceedings (whether before sentencing or pending appeal or otherwise), the prosecutor and the convicted person must be given an opportunity to make submissions in relation to the question.
- (2) But the attitude of the prosecutor towards the question does not restrict the court's exercise of its discretion in determining the question in accordance with the rules applying in the case.
- (3) Despite subsection (1) above, the prosecutor need not be given an opportunity to make submissions in relation to a question of bail arising under section 245J of this Act.
- (4) This section is without prejudice to any other right of the parties to be heard.]

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#### Textual Amendments

- F21** S. 32A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 5, 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S.I. 2007/527)

### 33 Bail: no fees exigible.

No clerks fees, court fees or other fees or expenses shall be exigible from or awarded against an accused in respect of [<sup>F22</sup>a decision on bail under section 22A above, an application for bail or of the appeal of such [<sup>F23</sup>a decision or] application to the High Court.

#### Textual Amendments

- F22** Words in s. 33 substituted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 7(3)(a)  
**F23** Words in s. 33 inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 7(3)(b)

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