



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART III

BAIL

23 Bail applications

- (1) Any person accused on petition of a crime which is by law bailable shall be entitled immediately, on any occasion on which he is brought before the sheriff prior to his 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, except murder or treason, and having given the prosecutor an opportunity to be heard, admit or refuse to admit the person to bail.
- (6) Where a person is charged on complaint with an offence, any judge having jurisdiction to try the offence may, at his discretion, on the application of the accused and after giving the prosecutor an opportunity to be heard, admit or refuse to admit the accused to bail.

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- (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.

24 Bail and bail conditions

- (1) All crimes and offences except, subject to subsection (2) below, murder and treason 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;
 - (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; 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.
- (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.
- (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.

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.
- (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.

26 Bail: circumstances where not available

- (1) Notwithstanding sections 23, 24 (except subsection (2)), 30, 32, 33 and 112 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;

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- (iii) an order having the same effect as a hospital order was made in respect of him under section 57(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 55(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(1) to (3) and 208 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.

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
 - (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;

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- (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.
- (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.
- (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.

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
 - (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 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) Where an application for bail—
 - (a) after committal until liberation in due course of law; or
 - (b) by a person charged on complaint with an offence,is refused or where the applicant 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, an application for 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 applicant 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 applicant 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 Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the applicant'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 applicant 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 the application, 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 applicant pending arrival of the order in due course of post.

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 his application for bail or of the appeal of such application to the High Court.