Bail, Judicial Appointments etc. (Scotland) Act 2000

2000 asp 9

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 5th July 2000 and received Royal Assent on 9th August 2000

An Act of the Scottish Parliament to change the law about bail; to enable alteration in the number of judges in the Inner House of the Court of Session; to abolish temporary sheriffs and create a new kind of sheriff; to change the law about justices of the peace; and to abolish district court prosecutions brought on behalf of or by local authorities.

PART 1

BAIL

1 Consideration of bail on first appearance

Before section 23 (bail applications) of the Criminal Procedure (Scotland) Act 1995 (c.46) (the "1995 Act"), there is inserted—

"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.

Status: *Point in time view as at 09/08/2000.*
Changes to legislation: *There are currently no known outstanding effects for the Bail, Judicial Appointments etc. (Scotland) Act 2000. (See end of Document for details)*

(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.”.

2 Bail and liberation where person already in custody

After section 23 (bail applications) of the 1995 Act there is inserted—

“**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.”.

3 Removal of restrictions on bail

(1) In section 24 (bail and bail conditions) of the 1995 Act, in subsection (1), the words “except, subject to subsection (2) below, murder and treason” are repealed.

(2) Section 26 (bail: circumstances where not available) of the 1995 Act is repealed.

4 Removal of restriction on appeals against refusal of bail

In section 32 (bail appeal) of the 1995 Act, in subsection (1), for the words from the beginning to “offence” there is substituted “ Where, in any case, bail ”.

PART 2

JUDICIAL APPOINTMENTS

CHAPTER 1

VARIATION OF NUMBER OF INNER HOUSE JUDGES AND FILLING OF VACANCIES

5 Variation of number of Inner House judges and filling of vacancies

In section 2 (composition of court) of the Court of Session Act 1988 (c.36)—
(a) after subsection (2) there is inserted—

"(2A) The Scottish Ministers may from time to time by order amend subsection (2) above so as to alter or further alter the number of senior judges in the two Divisions.

(2B) The power conferred by subsection (2A) above may be exercised—

(a) in relation only to one; or

(b) differently in relation to each,

of the two Divisions.

(2C) An order under this section shall be made by statutory instrument.

(2D) No order shall be made under this section unless a draft of the instrument containing it has been laid before and approved by resolution of the Scottish Parliament.";

(b) in subsection (6), for the words "subsection (7)" there is substituted " subsections (7) and (8) "; and

(c) after subsection (7), there is inserted—

"(8) The Scottish Ministers shall not give their consent under subsection (6) above to an appointment filling a vacancy in one of the two Divisions of the Inner House unless they are satisfied that the state of business in the Inner House requires that the vacancy be filled.".

CHAPTER 2

TEMPORARY AND PART-TIME SHERIFFS

6 Abolition of temporary sheriffs

(1) In section 11 (appointment of temporary sheriffs principal and sheriffs) of the Sheriff Courts (Scotland) Act 1971 (c.58) (the "1971 Act"), subsection (2) is repealed.

(2) Notwithstanding the coming into force of that repeal—

(a) a temporary sheriff may continue to exercise the jurisdiction and powers of a sheriff for the purposes of any proceedings commenced or other matter which began before such coming into force; and

(b) a temporary sheriff shall, for those purposes and for the purposes of any further proceedings arising out of the proceedings or other matter referred to in paragraph (a) above, be treated as continuing to be a temporary sheriff.

7 Creation of part-time sheriffs

After section 11 of the 1971 Act there is inserted—

"**11A Appointment of part-time sheriffs**

(1) The Scottish Ministers may, under this section, appoint persons to act as sheriffs, and persons so appointed shall be known as "part-time sheriffs".

Status: *Point in time view as at 09/08/2000.*
Changes to legislation: *There are currently no known outstanding effects for the Bail, Judicial Appointments etc. (Scotland) Act 2000. (See end of Document for details)*

(2) In making those appointments, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed by regulations made by them.

(3) A person shall not be appointed a part-time sheriff unless qualified under section 5(1) of this Act to be appointed to the office of sheriff.

(4) A part-time sheriff shall, without the necessity of receiving a commission in that behalf, be entitled to exercise in every sheriffdom the jurisdiction and powers attaching to the office of sheriff.

(5) The number of persons holding appointments as part-time sheriffs shall not, at any one time, exceed 60 or such other number as may be fixed in substitution by order made by the Scottish Ministers.

(6) A part-time sheriff shall be subject to such instructions, arrangements and other provisions as fall to be made under this Act by the sheriff principal of the sheriffdom in which the part-time sheriff is sitting.

(7) In the performance of their functions under this Act, sheriffs principal shall together have regard to the desirability of securing that every part-time sheriff—

(a) is given the opportunity of sitting on not fewer than 20 days; and

(b) does not sit for more than 100 days,

in each successive period of 12 months beginning with the day of the part-time sheriff's appointment as such.

(8) The Scottish Ministers shall pay to part-time sheriffs such remuneration and allowances as they determine.

11B Limitation, termination etc. of appointment of part-time sheriffs

(1) An appointment as a part-time sheriff shall, subject to subsections (2) to (4) below, last for 5 years.

(2) A part-time sheriff may resign at any time by giving notice to that effect to the Scottish Ministers.

(3) An appointment of a person as a part-time sheriff shall not extend beyond the day when the person reaches the age of 70.

(4) A part-time sheriff's appointment shall come to an end upon the part-time sheriff's being removed from office under section 11C of this Act.

(5) A part-time sheriff whose appointment comes to an end by operation of subsection (1) above may be reappointed and, except in the circumstances set out in subsection (6) below, shall be reappointed.

(6) The circumstances mentioned in subsection (5) above are that—

(a) the part-time sheriff has declined that reappointment;

(b) the part-time sheriff is aged 69 or over;

(c) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment;

(d) the part-time sheriff has not sat for a total of 50 or more days in the preceding five year period; or

(e) the Scottish Ministers have, since the part-time sheriff was last appointed, made an order under section 11A(5) of this Act reducing the number of persons who may hold appointment as part-time sheriffs.

(7) A part-time sheriff whose appointment comes to an end by resignation under subsection (2) above may be reappointed.

(8) The provisions of section 11A and this section of this Act apply to a reappointment under subsections (5) and (7) above as they apply to an appointment.

(9) A part-time sheriff who is a solicitor in practice shall not carry out any function as a part-time sheriff in a sheriff court district in which his or her main place of business as such solicitor is situated.

11C Removal of part-time sheriffs from office

(1) A part-time sheriff may be removed from office by and only by order of the tribunal constituted by and under subsection (3) below ("the tribunal").

(2) The tribunal may order the removal from office of a part-time sheriff only if, after investigation carried out at the request of the Scottish Ministers, it finds that the part-time sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour.

(3) The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session—

(a) either a Senator of the College of Justice or a sheriff principal (who shall preside);

(b) a person who is, and has been for at least ten years, legally qualified within the meaning of section 5(1) of this Act; and

(c) one other person.

(4) Regulations, made by the Scottish Ministers—

(a) may make provision enabling the tribunal, at any time during an investigation, to suspend a part-time sheriff from office and providing as to the effect and duration of such suspension; and

(b) shall make such further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

11D Regulations and orders under sections 11A and 11C

(1) Regulations under section 11A or section 11C and orders under section 11A of this Act shall be made by statutory instrument.

(2) No such regulations or order shall be made unless laid in draft before, and approved by a resolution of, the Scottish Parliament.".

Status: *Point in time view as at 09/08/2000.*
Changes to legislation: *There are currently no known outstanding effects for the Bail, Judicial Appointments etc. (Scotland) Act 2000. (See end of Document for details)*

CHAPTER 3

JUSTICES OF THE PEACE

8 Appointment of justices

In section 9 (appointment and removal of justices) of the District Courts (Scotland) Act 1975 (c.20) (the "1975 Act")—

(a) after subsection (2), there is inserted—

"(2A) That instrument shall specify whether the appointment is as a full justice or as a signing justice, and the name of any signing justice so appointed shall be entered in the supplemental list.

(2B) A signing justice may, subject to sections 9A, 12 and 15(1) of this Act, be appointed under subsection (2) above as a full justice.";

(b) after subsection (8), there is inserted—

"(8A) In making appointments of justices of the peace, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed by regulations made by them.

(8B) Regulations under subsection (8A) above shall be made by statutory instrument.

(8C) No such regulations shall be made unless laid in draft before, and approved by resolution of, the Scottish Parliament.";

and

(c) after subsection (11), there is inserted—

"(12) In this section—

a "full justice" means a justice of the peace who is qualified as a justice to do any act (including any function of a judicial nature) or to be a member of any committee or other body; and

a "signing justice" means a justice of the peace who is qualified only to do all or any of the acts as a justice set out in section 15(9) of this Act.".

9 Removal, restriction of functions and suspension of justices

(1) After section 9 of the 1975 Act there is inserted—

"**9A Removal and restriction of functions of justices**

(1) A full justice may be removed from office or be restricted to having the functions of a signing justice by, and only by, order of the tribunal constituted by and under subsection (3) below (the "tribunal"); but this subsection is without prejudice to sections 9(4) (as read with (6)) and (7), 12(2) and 15(1) of this Act.

(2) The tribunal may make an order under subsection (1) above only if, after investigation carried out at the request of the Scottish Ministers, it finds that the full justice is, by reason of inability, neglect of duty or misbehaviour—

(a) unfit for office as such; or, as the case may be,

(b) unfit for performing functions of a judicial nature.

(3) The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session—

(a) a sheriff principal (who shall preside);

(b) a person who is, and has been for at least ten years, legally qualified within the meaning of section 5(2) of this Act; and

(c) one other person.

(4) Except in a case to which subsection (5) below applies, the sheriff principal shall be the sheriff principal for the sheriffdom which includes the commission area for which the justice who is the subject of the investigation was appointed.

(5) This subsection applies where it appears to the Lord President of the Court of Session to be inappropriate for that sheriff principal to be a member of the tribunal.

(6) The sheriff principal referred to in subsection (3)(a) above shall not be a temporary sheriff principal.

(7) Regulations, made by the Scottish Ministers—

(a) may make provision enabling the tribunal, at any time during an investigation, to suspend a full justice from office or from performing functions of a judicial nature and providing as to the effect and duration of such suspension;

(b) shall make such further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

(8) Regulations under subsection (7) above shall be made by statutory instrument.

(9) No such regulations shall be made unless laid in draft before, and approved by resolution of, the Scottish Parliament.

(10) A person who has been removed under subsection (1) above from the office of justice shall be ineligible for re appointment; and a justice whose functions have been restricted under that subsection to those of a signing justice shall be ineligible for re appointment as a full justice.

(11) The name of a person who is the subject of an order under subsection (1) above, restricting that person's functions to those of a signing justice, shall be entered in the supplemental list.

(12) The Scottish Ministers shall send a copy of each order under subsection (1) above to the clerk of the peace for the commission area for which the justice who is the subject of the order was appointed.

(13) In this section, "full justice" and "signing justice" have the same meanings as in section 9 of this Act.".

(2) In section 9 of the 1975 Act, after subsection (2), there is inserted—

"(2C) A signing justice may, in the name of Her Majesty and by instrument under the hand of the Scottish Ministers, be removed from office.".

Status: *Point in time view as at 09/08/2000.*
Changes to legislation: *There are currently no known outstanding effects for the Bail, Judicial Appointments etc. (Scotland) Act 2000. (See end of Document for details)*

(3) The modifications made by this section and paragraph 2(1) of the schedule to this Act have effect as respects justices appointed before this section comes into force (as well as those appointed thereafter).

10 Restriction of functions of justices who are councillors etc.

For section 12 (disqualification in certain cases of justices who are members of local authorities) of the 1975 Act there is substituted—

"**12 Restriction of functions of justices who are councillors etc.**

(1) A member of a local authority—
(a) shall not be appointed to hold office as a full justice;
(b) may be appointed as a signing justice.

(2) A full justice who—
(a) at the coming into force of section 9 of the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9) is; or
(b) at any time thereafter becomes,

(1) a member of a local authority, shall thereupon become a signing justice.

(3) The name of a person—
(a) appointed as a justice under subsection (1)(b) above;
(b) who becomes a signing justice by virtue of the operation of subsection (2) above,

shall be entered in the supplemental list.

(4) In subsection (1) above—
"local authority" includes the Service Authority for the National Criminal Intelligence Service;
"full justice" and "signing justice" have the same meanings as in section 9 of this Act.".

PART 3

MISCELLANEOUS AND GENERAL PROVISIONS

11 Abolition of prosecutions on behalf of or by local authorities

(1) It is no longer competent to institute in district courts proceedings—
(a) instructed by;
(b) brought by persons authorised by,

or otherwise brought on behalf of or by a local authority.

(2) Any such proceedings so instituted prior to, and continuing on the date of coming into force of this Act shall, unless taken over on or before that date by the procurator fiscal, be treated as if the diet had been deserted simpliciter on that date.

(3) In this section, "local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

12 Minor and consequential amendments

The schedule to this Act, which makes minor amendments and amendments consequential on the provisions of this Act, has effect.

13 Short title

This Act may be cited as the Bail, Judicial Appointments etc. (Scotland) Act 2000.

Status: *Point in time view as at 09/08/2000.*
Changes to legislation: *There are currently no known outstanding effects for the Bail, Judicial Appointments etc. (Scotland) Act 2000. (See end of Document for details)*

SCHEDULE

(introduced by section 12)

MINOR AND CONSEQUENTIAL AMENDMENTS

Sheriff Courts (Scotland) Act 1971 (c.58)

1 (1) In section 5 (qualification for offices of sheriff principal and sheriff) of the Sheriff Courts (Scotland) Act 1971, in subsection (2)—

(a) for "section 11(3)" there is substituted " sections 11(3) and 11A "; and

(b) for "temporary" where it second occurs there is substituted " part-time ".

(2) In section 5A (retiring age for sheriff principal and sheriff) of that Act, after subsection (2) there is inserted—

"(3) Without prejudice to sections 11(4A) and (4B) and 11B(3) of this Act, in this section, "sheriff principal" does not include a temporary sheriff principal and "sheriff" does not include a part-time sheriff.".

(3) In section 6 (disqualification of sheriffs principal and sheriffs) of that Act, in subsection (5), for "temporary" where it second occurs there is substituted " part-time ".

(4) Section 7 (jurisdiction of sheriff) of that Act is renumbered as subsection (1) of that section and after that subsection there is inserted—

"(2) Without prejudice to section 11A(4) of this Act, in this section, "sheriff" does not include a part-time sheriff.".

(5) Section 9 (power of Scottish Ministers to give administrative directions) of that Act is renumbered as subsection (1) of that section and after that subsection there is inserted—

"(2) In this section, "sheriff" does not include a part-time sheriff.".

(6) In section 10 (Scottish Ministers may authorise sheriff principal or direct sheriff to act in another sheriffdom) of that Act, in subsection (5), after "honorary" there is inserted " or a part-time ".

(7) In section 11 (appointment of temporary sheriffs principal and sheriffs) of that Act—

(a) in subsection (3)—

(i) the words "or a temporary sheriff";

(ii) in paragraph (a), the words "in the case of an appointment as a temporary sheriff principal"; and

(iii) paragraph (b);

(b) in subsection (4), the words "or of a temporary sheriff";

(c) in subsection (4A), the words "or temporary sheriff";

(d) in subsection (5), the words "or a temporary sheriff";

(e) in subsection (6)—

(i) the words ", or a temporary sheriff for,"; and

(ii) the words "or, as the case may be, sheriff"; and

(f) in subsection (8), the words "or a temporary sheriff",

are repealed.

Status: *Point in time view as at 09/08/2000.*
Changes to legislation: *There are currently no known outstanding effects for the Bail, Judicial Appointments etc. (Scotland) Act 2000. (See end of Document for details)*

(8) In section 12 (removal from office, and suspension, of sheriff principal or sheriff) of that Act, in subsection (7), for "temporary" where it second occurs there is substituted " part-time ".

(9) In section 14 (functions of Scottish Ministers with respect to number, residence and place of duties of sheriffs) of that Act, in subsection (5), for the words from "sheriff" where it second occurs to "sheriff" where it third occurs there is substituted " or a part-time ".

(10) In section 15 (general functions of sheriff principal) of that Act, in subsection (2), after "sheriffdom," where it second occurs there is inserted " any part-time sheriff ".

(11) In section 16 (functions of sheriff principal with respect to duties and leave of absence of sheriffs) of that Act—

(a) in subsection (1)—

(i) in paragraph (a), the word "and" where it first occurs is repealed and, after "sheriffdom", there is inserted " , and any part-time sheriffs ";

(ii) in paragraph (b), after "sheriffdom" where it third occurs there is inserted " or by any part-time sheriffs "; and

(iii) after "sheriff" where it last occurs there is inserted " or part-time sheriff ";

(b) in subsection (3), after "include" there is inserted " a part-time or ".

(12) In section 45 (interpretation) of that Act, in subsection (1)(b), for "temporary" in both places where it occurs there is substituted " part-time ".

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

2 (1) In section 9 (appointment and removal of justices) of the District Courts (Scotland) Act 1975—

(a) in subsection (2), the words from "and", where thirdly occurring, onward are repealed;

(b) in subsection (6), for the words from "an" onward, there is substituted " if it were an instrument made under subsection (7) below removing the justice from office ";

(c) in subsection (7), for the words from "under" where it second occurs to "is" where it second occurs there is substituted " in the name of Her Majesty under the hand of the Scottish Ministers, if they are ";

(d) in subsection (9), after paragraph (b), there is inserted—

"(bb) a record of orders under section 9A(1) of this Act which have come into operation;";

and

(e) in subsection (10)—

(i) for "above" there is substituted " , (2C) or (7) above or section 11(7) of this Act "; and

(ii) for "who have been transferred to" there is substituted " whose names have been entered in ".

(2) In section 11 (ex officio justices) of that Act—

(a) after subsection (2), there is inserted—

"(2A) The name of a person appointed as an ex officio justice under subsection (2) above shall be entered in the supplemental list.";

and

(b) in subsection (7)—

(i) there is inserted at the beginning " Subject to section 12 of this Act, "; and

(ii) for the words "in like manner" to the end there is substituted " by an instrument in the name of Her Majesty under the hand of the Scottish Ministers. ".

(3) In section 15 (supplemental list) of that Act—

(a) subsections (2) and (7) are repealed; and

(b) after subsection (8) there is inserted—

"(8A) A justice whose name is, under this section, entered in the supplemental list is a signing justice within the meaning of section 9(12) of this Act.".

(4) In section 16 (justices' committees) of that Act, after subsection (2) there is inserted—

"(2A) For the purposes of subsection (2) above, "justices" includes signing justices who are or have become such by operation of section 12 of this Act.".

Education (Scotland) Act 1980 (c.44)

3 (1) In section 36 (power of education authority in relation to irregular attendance of child at a public school) of the Education (Scotland) Act 1980—

(a) in subsection (1)—

(i) after "may" where it second occurs there is inserted —

"(a)";

and

(ii) for "or may" there is substituted

"in the court of summary jurisdiction in which proceedings may be taken for the offence, not being the district court; or

(b) report the circumstances to the procurator fiscal or";

(b) for the words "to prosecute" there is substituted " so to report ".

(2) In section 43 (prosecutions and penalties) of that Act, in subsection (2) after "section" there is inserted " , other than in the district court, ".

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40)

4 In Schedule 4 (judicial appointments) to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, in paragraph 2—

(a) the words "or sheriff" are repealed; and

(b) after "sheriffs)" there is inserted " or on a part-time sheriff appointed under section 11A (appointment of part-time sheriffs) ".

Status: *Point in time view as at 09/08/2000.*
Changes to legislation: *There are currently no known outstanding effects for the Bail, Judicial Appointments etc. (Scotland) Act 2000. (See end of Document for details)*

Judicial Pensions and Retirement Act 1993 (c.8)

5 (1) In section 27 (completion of proceedings after retirement) of the Judicial Pensions and Retirement Act 1993, in subsection (3), after paragraph (f) there is inserted—

"(ff) a part-time sheriff;".

(2) In Schedule 5 (retirement provisions: the relevant offices) to that Act, the words "or temporary sheriff" are repealed.

Scottish Land Court Act 1993 (c.45)

6 In section 1 (the Land Court) of the Scottish Land Court Act 1993, in subsection (4)—

(a) the words "or sheriff" are repealed; and

(b) after "11" there is inserted " or on a part-time sheriff appointed under section 11A (appointment of part-time sheriffs) ".

Criminal Procedure (Scotland) Act 1995 (c.46)

7 (1) In section 23 (bail applications) of the Criminal Procedure (Scotland) Act 1995—

(a) in subsection (1)—

(i) the words "which is by law bailable" are repealed; and

(ii) after "any" where it second occurs there is inserted " (other than the first) ";

(b) in subsection (5) the words "except murder or treason" are repealed; and

(c) for subsection (6) there is substituted—

"(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.".

(2) In section 32 (bail appeal) of that Act—

(a) in subsections (1), (2), (5), (7) and (10), for the words "applicant" and "applicant's", wherever they occur, there are substituted respectively " accused " and " accused's ";

(b) in subsection (2), the words "an application for" are repealed; and

(c) in subsection (7), for the words "the application" there is substituted " bail ".

(3) In section 33 (bail: no fees exigible) of that Act—

(a) for "his" there is substituted " a decision on bail under section 22A above, an "; and

(b) after "such" there is inserted " a decision or ".

(4) In section 186 (appeals against sentence only) of that Act, in subsection (5)(b), for "temporary" there is substituted " part-time ".

(5) In section 194 (appeals against sentence only) of that Act, in subsection (2)(b), for "temporary" there is substituted " part-time ".

Status:
Point in time view as at 09/08/2000.

Changes to legislation:
There are currently no known outstanding effects for the Bail, Judicial Appointments etc. (Scotland) Act 2000.