

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

Part 1 - Bail

Section 1 – Determination of questions of bail

New Section 23D

18. Section 23D sets out particular serious types of cases in relation to which bail is to be granted only in exceptional circumstances. A similar exceptional circumstances test operates in England and Wales under section 25 of the Criminal Justice and Public Order Act 1994. Section 23D reflects the fact that under article 5(3) of the ECHR, detention would usually be justified when someone with a previous conviction for a grave offence is charged with a second such crime on the basis that this demonstrates a need to prevent further offences whilst on bail. It would therefore only be exceptionally that detention was not justified under the Convention. Subsections (2) and (3) apply:
 - Where an individual is on a serious charge (to be heard before a jury) of a violent or sexual offence and has a previous serious conviction for a violent or sexual offence; and
 - Where an individual is on a serious charge of drug trafficking and has a previous serious conviction for drug trafficking.
19. The section also defines the terms 'drug trafficking offence' 'sexual offence' and 'violent offence'. The definition of drug trafficking covers a wide range of drug related offences, including production and supply of controlled drugs, and any involvement in or offer to supply and possession with intent to supply such drugs. Sexual offence is defined by reference to section 210A(10) and (11) of the 1995 Act which does not include prostitution.
20. The court is also entitled to take into account convictions for similar serious offences in England, Wales, Northern Ireland and any other state of the European Union. The court is specifically given discretion to determine whether a conviction in another jurisdiction is equivalent to a conviction on indictment in Scotland for one of the offence types listed.
21. Subsection (7) makes it clear that this section is without prejudice to the wider factors and considerations to be taken into account in relation to every bail decision which are set out in new Section 23C.