



Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

PART 1

BAIL

1 Determination of questions of bail

After section 23A of the 1995 Act there is inserted—

“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.

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);

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- (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.

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.”.

2 Bail and bail conditions

- (1) In section 24 (bail and bail conditions) of the 1995 Act—
 - (a) after subsection (2) there is inserted—
 - “(2A) Whenever the court grants or refuses bail, it shall state its reasons.
 - (2B) Where the court—
 - (a) grants bail to a person accused of a sexual offence (having the meaning given by section 210A(10) and (11) of this Act); and
 - (b) does so without imposing on the accused further conditions under subsection (4)(b)(i) below,the court shall also state why it considers in the circumstances of the case that such conditions are unnecessary.”.

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- (b) in subsection (4), in paragraph (b)(ii), after the word “parade” there is inserted “or other identification procedure”;
- (c) in subsection (5), after paragraph (c) there is inserted—
 - “(ca) does not behave in a manner which causes, or is likely to cause, alarm or distress to witnesses;”.

(2) In section 25 (bail conditions: supplementary) of that Act—

- (a) before subsection (1) there is inserted—

“(A1) When granting bail, the court shall (if the accused is present) explain to the accused in ordinary language—

- (a) the effect of the conditions imposed;
- (b) the effect of the requirement under subsection (2B) below; and
- (c) the consequences which may follow a breach of any of those conditions or that requirement.

(B1) The accused shall (whether or not the accused is present when bail is granted) be given a written explanation in ordinary language of the matters mentioned in paragraphs (a) to (c) of subsection (A1) above.

(C1) Such a written explanation may be contained in the copy of the bail order given to the accused or in another document.”

- (b) in subsection (1), after paragraph (a) there is inserted—

“(aa) that breach of a condition imposed is an offence and renders the accused liable to arrest, prosecution and punishment under this Act;”

- (c) after subsection (2A) there is inserted—

“(2B) Where the domicile of citation specified in an order granting bail ceases to be the accused’s normal place of residence, the accused must make an application under subsection (2) above within 7 days of that happening.

(2C) A person who without reasonable excuse contravenes subsection (2B) above is guilty of an offence and is liable—

- (a) on conviction in the JP court, to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 60 days or to both;
- (b) in any other case, to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.”.

3 Breach of bail conditions

(1) In section 27 (breach of bail conditions: offences) of the 1995 Act—

- (a) in subsection (2), in paragraph (b)(ii), for the word “3” there is substituted “12”;
- (b) after subsection (4A) there is inserted—

“(4B) In any proceedings in relation to an offence under subsection (1) above, the fact that (as the case may be) an accused—

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- (a) was on bail;
 - (b) was subject to any particular condition of bail;
 - (c) failed to appear at a diet; or
 - (d) was given due notice of a diet,shall, unless challenged in the manner described in paragraph (a) or (b) of subsection (4A) above, be held as admitted.”
 - (c) after subsection (6) there is inserted—
 - “(6A) Where, despite the requirement to have regard to the matters specified in paragraphs (a) to (c) of subsection (3) above, the sentence or disposal in respect of the subsequent offence is not different from that which the court would have imposed but for that subsection, the court shall state (as appropriate, by reference to those matters) the reasons for there being no difference.”
 - (d) in subsection (7)(b), for the word “2” there is substituted “5”,
 - (e) in subsection (9), for the words “The penalties provided for in subsection (2) above may” there is substituted “A penalty under subsection (2) or (7) above shall”,
 - (f) after subsection (9) there is inserted—
 - “(9A) The reference in subsection (9) above to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—
 - (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint or indictment), framing the sentences so that they have effect consecutively;
 - (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.
 - (9B) Subsection (9A)(b) above is subject to section 204A of this Act.”.
- (2) In section 28 (breach of bail conditions: arrest of offender etc.) of that Act—
- (a) after subsection (1) there is inserted—
 - “(1A) Where an accused who has been released on bail is arrested by a constable (otherwise than under subsection (1) above), the accused may be detained in custody under this subsection if the constable has reasonable grounds for suspecting that the accused has breached, or is likely to breach, any condition imposed on his bail.
 - (1B) Subsection (1A) above—
 - (a) is without prejudice to any other power to detain the accused;
 - (b) applies even if release of the accused would be required but for that subsection.”
 - (b) in subsection (2), for the words “this section” there is substituted “subsection (1) above, or is detained under subsection (1A) above,”.

4 Bail review and appeal

- (1) In section 30 (bail review) of the 1995 Act—

(a) after subsection (1) there is inserted—

“(1A) This section also applies where a person who has accepted the conditions imposed on his bail wants to have any of them removed or varied.”,

(b) in subsection (2), for the words from “above” to the end there is substituted “or (1A) above, have power to review (in favour of the person) its decision as to bail, or its decision as to the conditions imposed, if—

- (a) the circumstances of the person have changed materially; or
- (b) the person puts before the court material information which was not available to it when its decision was made.”.

(2) In section 32 (bail appeal) of that Act, after subsection (3) there is inserted—

“(3A) A notice of appeal under this section is to be lodged with the clerk of the court from which the appeal is to be taken.

(3B) When an appeal is made under this section, that clerk shall without delay—

- (a) send a copy of the notice of appeal to the judge whose decision is the subject of the appeal; and
- (b) request the judge to provide a report of the reasons for that decision.

(3C) The judge shall, as soon as is reasonably practicable, provide that clerk with the judge’s report of those reasons.

(3D) The clerk of court (where not the Clerk of Justiciary) shall send the notice of appeal without delay to the Clerk of Justiciary.

(3E) That clerk (where not the Clerk of Justiciary) shall, before the end of the day after the day of receipt of the notice of appeal, send the judge’s report (if provided by then) to the Clerk of Justiciary.

(3F) The Clerk of Justiciary shall, upon receipt of the notice of appeal, without delay fix a diet for the hearing of the appeal.

(3G) The Clerk of Justiciary shall send a copy of the judge’s report to—

- (a) the accused or his solicitor; and
- (b) the Crown Agent.

(3H) Where the judge’s report is not sent as mentioned in subsection (3E) above—

- (a) the High Court may call for the report to be submitted to it within such period as it may specify; or
- (b) if it thinks fit, hear and determine the appeal without the report.

(3I) Subject to subsection (3G) above, the judge’s report shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of person as may be so prescribed.”.

5 Attitude of prosecutor after conviction

After section 32 of the 1995 Act there is inserted—

“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.”.

6 Time for dealing with applications

- (1) In section 22A (consideration of bail on first appearance) of the 1995 Act—
 - (a) in subsection (1), the words “and within the period specified in subsection (2) below” are repealed,
 - (b) for subsection (2) there is substituted—
 - “(2) Admittance to or refusal of bail shall be determined before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day on which the person accused or charged is brought before the sheriff or judge.”,
 - (c) in subsection (3), for the words “the end of that period” there is substituted “that time”.
- (2) In section 23 (bail applications) of that Act, in subsection (7), for the words “within 24 hours after” there is substituted “before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day of”.
- (3) In section 177 (procedure where applicant in custody) of that Act, in subsection (2), for the words “within 24 hours after such application has been” there is substituted “before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day on which the application is”.
- (4) In section 200 (remand for enquiry into physical or mental condition) of that Act—
 - (a) in subsection (9)—
 - (i) after the word “appeal” in the first and second places where it occurs there is inserted “to the High Court by note of appeal”,

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- (ii) the words “by note of appeal presented to the High Court” are repealed,
 - (b) after that subsection there is added—
 - “(9A) A note of appeal under subsection (9) above is to be—
 - (a) lodged with the clerk of the court from which the appeal is to be taken; and
 - (b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.”.
- (5) In section 201 (power of court to adjourn case before sentence) of that Act—
- (a) in subsection (4)—
 - (i) after the word “appeal” in the first place where it occurs there is inserted “to the High Court”,
 - (ii) the words “presented to the High Court” are repealed,
 - (b) after that subsection there is added—
 - “(5) A note of appeal under subsection (4) above is to be—
 - (a) lodged with the clerk of the court from which the appeal is to be taken; and
 - (b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.”.
- (6) In section 245J (breach of certain orders: adjourning hearing and remanding in custody etc.) of that Act—
- (a) in subsection (5), for the words “by note of appeal presented to the High Court, who” there is substituted “to the High Court by note of appeal, and the High Court”,
 - (b) after that subsection there is added—
 - “(6) A note of appeal under subsection (5) above is to be—
 - (a) lodged with the clerk of the court from which the appeal is to be taken; and
 - (b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.”.