

BAIL AND RELEASE FROM CUSTODY (SCOTLAND) ACT 2023

EXPLANATORY NOTES

THE ACT: SECTION BY SECTION

Part 2: Release from custody

Section 12—Duty to engage in release planning

69. Section 12 amends the Community Justice (Scotland) Act 2016 (“the 2016 Act”) by inserting new sections 34A and 34B after section 34. Section 34A imposes a duty on certain persons to engage in the development, management and delivery of a release plan if requested to do so by the Scottish Ministers. A “release plan” is defined in subsection (9). It is a plan to prepare individuals for release (after they have been remanded in custody or imprisoned or detained in a penal institution) and to facilitate their reintegration into the community and their access to relevant general services. The term “relevant general services” is given the same meaning as in section 1 of the 2016 Act and includes, for example, services and support provided to people generally in relation to housing, employment and social welfare.
70. In practice, it is expected that the Scottish Prison Service will represent the Scottish Ministers in making requests to engage in release planning and in release planning itself. The Scottish Prison Service is not a statutory body as such, being an Executive Agency of the Scottish Ministers, so is not normally mentioned in legislation. But it carries out the statutory and other functions of the Scottish Ministers in relation to prisons and prisoners. It is also expected that Social Security Scotland will engage in release planning, although not mentioned in the list of persons in section 34A(2) on whom the duty to engage (on request) is imposed. Social Security Scotland is also not a statutory body but is an Executive Agency of the Scottish Ministers. As the request to engage in release planning is issued by the Scottish Ministers, they will already be engaged in the appropriate capacity. The list of persons in section 34A(2) may be modified by regulations made by the Scottish Ministers.
71. Subsection (4) of section 34A provides that a person complying with a request to engage in release planning must have regard to the role which third sector bodies are able to play in relation to the release plan. The person may, if appropriate, commission services from, or co-ordinate with existing services provided by, third sector bodies.
72. Subsection (5) of section 34A allows the Scottish Ministers to make further provision about engagement under subsection (1), and to modify the list of bodies on whom the duty to engage is imposed under subsection (2). Subsection (6) sets out more detail about the sort of provision that may be made by such regulations, although the examples given are not exhaustive. They include provision in relation to individuals who are released directly from court following a period on remand, the appointment of a lead person in relation to a particular release plan, and the operation of the duty of co-operation already set out in the 2016 Act in relation to the duty to engage under section 34A(1).

*These notes relate to the Bail and Release from Custody (Scotland)
Act 2023 (asp 4) which received Royal Assent on 1 August 2023*

73. Section 34B(1) requires the Scottish Ministers to publish guidance about the duty of engagement imposed by section 34A(1). The guidance must be published with one year of the day on which section 12(2) of the Act comes into force. Subsection (2) sets out particular examples of the sort of provision which may be included in the guidance, while subsection (3) sets out a list of bodies who are to be consulted when the guidance is prepared, and any time it is reviewed or revised. Subsection (4) requires the Scottish Ministers to keep the guidance under review and update it when appropriate. Subsection (6) places a duty on persons who comply with a request to engage under section 34A(1) to have regard to the guidance, to ensure a consistent approach to engagement.