



Bail and Release from Custody (Scotland) Act 2023

2023 asp 4

PART 1

BAIL

1 Decisions on bail: relevant information

- (1) The Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) is amended as follows.
- (2) In section 22A (consideration of bail on first appearance), after subsection (1) insert—
 - “(1A) Before determining whether to admit or refuse to admit the person accused or charged to bail, the sheriff or judge must also give an officer of a local authority an opportunity to provide (orally or in writing) information relevant to that determination.”.
- (3) In section 23B (entitlement to bail and the court’s function)—
 - (a) at the end of subsection (4) insert “(including submissions in relation to any information provided by an officer of a local authority under section 22A(1A) or in response to a request under subsection (6))”,
 - (b) in subsection (6), after “counsel” insert “or an officer of a local authority”,
 - (c) after subsection (6) insert—
 - “(6A) Where relevant to a question of bail, and without prejudice to the generality of subsection (6), the court may in particular request the prosecutor to provide it with information in relation to the risk of harm to the complainer.”,
 - (d) in subsection (7)—
 - (i) for “that party” in the first place where it occurs substitute “the prosecutor, the accused person’s solicitor or counsel, or an officer of a local authority”,
 - (ii) after “party” in the second place where it occurs insert “or officer”.
- (4) The Social Work (Scotland) Act 1968 is amended as follows.

(5) In section 27 (supervision and care of persons put on probation or released from prisons etc.), in subsection (1), before paragraph (a) insert—

“(za) making available to any court, in accordance with section 22A(1A) or 23B(6) of the Criminal Procedure (Scotland) Act 1995, such information as may be relevant to the court’s determination of whether to grant bail to persons who are accused of or charged with an offence;”.

2 Determination of good reason for refusing bail

(1) The 1995 Act is amended as follows.

(2) In section 23B (entitlement to bail and the court’s function)—

(a) for subsection (1) substitute—

“(1) Bail is to be granted to an accused person unless the court determines that there is good reason for refusing bail.

(1A) The court may determine that there is good reason for refusing bail only if it considers that—

(a) at least one of the grounds specified in section 23C(1) applies, and

(b) having regard to the public interest, and having considered the imposition of bail conditions in accordance with subsection (2), it is necessary to refuse bail—

(i) in the interests of public safety, including the protection of the complainer from a risk of harm, or

(ii) to prevent a significant risk of prejudice to the interests of justice.”.

(b) subsection (3) is repealed,

(c) after subsection (7) insert—

“(8) For the purposes of subsections (1A)(b)(i) and (6A)—

“complainer” means the person against whom the offence to which the proceedings relate is alleged to have been committed,

“harm” means physical or psychological harm,

“psychological harm” includes fear, alarm and distress.

(9) For the purposes of subsection (1A)(b)(ii), “prejudice to the interests of justice” means—

(a) the accused person evading justice as a result of the proceedings being delayed or discontinued, or

(b) the course of justice in the proceedings being impeded or prejudiced as a result of—

(i) the destruction, concealment or withholding of evidence,

(ii) the giving of false or misleading evidence, or

(iii) the quality of evidence, or its sufficiency in law, being diminished.

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- (10) In subsection (9)(b)(iii), the reference to the quality of evidence is to its quality in terms of completeness, accuracy and probative value.”.
- (3) In section 23C (grounds relevant as to question of bail)—
- (a) in subsection (1), at the beginning of paragraph (a) insert “subject to subsection (1A),”,
 - (b) after subsection (1) insert—

“(1A) When determining whether there is good reason for refusing bail in summary proceedings, the court may take account of any such risk as is mentioned in subsection (1)(a) only where—

 - (a) the person has previously failed to appear at a relevant diet, or
 - (b) the proceedings relate to an offence under section 27(1)(a) or 150(8).”.
 - (c) after subsection (2) insert—

“(3) In subsection (1A)(a), “relevant diet” means a diet of the court relating to the offence with which the person is charged—

 - (a) of which the person has been given due notice, or
 - (b) at which the person is required by this Act to appear.”.

3 Removal of restriction on bail in certain solemn cases

Section 23D of the 1995 Act (restriction on bail in certain solemn cases) is repealed.

4 Decisions on bail: duty to state and record reasons

- (1) Section 24 of the 1995 Act (bail and bail conditions) is amended as follows.
- (2) After subsection (2A) insert—
- “(2AA) Where the court refuses bail in any proceedings in which a person is accused of an offence, it must—
- (a) state in particular—
 - (i) the grounds on which it determines, in accordance with section 23B(1A), that there is good reason for refusing bail,
 - (ii) if refusing bail solely on the ground specified in section 23C(1)(a) (substantial risk of absconding or failing to appear), its reasons for considering under section 23B(1A) (b) that it is necessary to do so, and
 - (iii) its reasons for considering under section 23B(1A)(b) and (2) that either it would not be appropriate to impose on the accused bail conditions subject to a requirement to submit to monitoring in accordance with Part 1 of the Management of Offenders (Scotland) Act 2019 (electronic monitoring) or that doing so would not adequately safeguard the interests of public safety or justice as mentioned in section 23B(1A)(b) (i) or (ii), and
 - (b) have the grounds mentioned in paragraph (a)(i) entered in the record of the proceedings.”.

- (3) In subsection (2B)(a), for the words from “a sexual offence” to “Act)” substitute “an offence falling within subsection (2C)”.
- (4) After subsection (2B) insert—
- “(2C) An offence falls within this subsection if it is—
- (a) a sexual offence (having the meaning given by section 210A(10) and (11)),
 - (b) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (c) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
 - (d) an offence under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (offence of stalking),
 - (e) an attempt, conspiracy or incitement to commit an offence mentioned in paragraph (b), (c) or (d),
 - (f) aiding, abetting, counselling or procuring the commission of an offence mentioned in paragraph (b), (c) or (d).”.

(5) In subsection (8), after “this section” insert “(other than subsection (2AA))”.

5 Time spent on electronically monitored bail

After section 210 of the 1995 Act (consideration of time spent in custody) insert—

“210ZA Consideration of time spent on electronically monitored bail

- (1) This section applies where—
- (a) a court passes a sentence of imprisonment or detention on a person for an offence, and
 - (b) the person has spent a period of time (“the bail period”) on qualifying bail awaiting trial or sentence.
- (2) When passing the sentence, the court must—
- (a) have regard to the bail period,
 - (b) specify, in accordance with subsection (3), a period of time (“the relevant period”) which is to be treated as a period of time spent in custody by the person, and
 - (c) unless the relevant period is nil, direct (for the purpose of executing the sentence) that the person is to be treated as having served either—
 - (i) the sentence in full, where the relevant period is equal to or greater than the sentence passed, or
 - (ii) such part of the sentence as is equal to the relevant period, where the relevant period is less than the sentence passed.
- (3) The relevant period is to be the period equal to one-half of either of the following (rounded up, as necessary, to the nearest whole day)—
- (a) the bail period, or
 - (b) the bail period less such period (whether all or part of the bail period) as the court considers appropriate to disregard.

- (4) Where the court specifies the relevant period in accordance with subsection (3) (b), it must state its reasons for disregarding all or (as the case may be) part of the bail period.
- (5) Nothing in this section affects the application of section 210 to any period of time which the person may additionally have spent in custody or in hospital as described in that section.
- (6) For the purposes of this section—
 - (a) “qualifying bail” means bail subject to a condition—
 - (i) which requires the person to remain at one or more specified places for a total period (whether or not continuous) of not less than 9 hours in any given day, and
 - (ii) in relation to which the person is required to submit to monitoring in accordance with Part 1 of the Management of Offenders (Scotland) Act 2019 (electronic monitoring etc.),
 - (b) references to the bail period are references to the period beginning on the day on which the person is granted qualifying bail and ending on the day before the day on which the person ceases to be on qualifying bail.
- (7) The Scottish Ministers may by regulations—
 - (a) modify—
 - (i) the meaning of “qualifying bail” or “the bail period” given by subsection (6),
 - (ii) the meaning of “the relevant period” given by subsection (3),
 - (b) further modify this section, or modify any other enactment, to make such further provision for the purposes of this section as the Scottish Ministers consider appropriate.
- (8) Regulations under subsection (7)—
 - (a) may include incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) are subject to the affirmative procedure.”.

6 Report on bail and remand

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the reporting period, prepare and publish a report on bail and remand.
- (2) The report must include the following information for each year of the reporting period—
 - (a) the average daily remand population,
 - (b) the total number of individuals within the remand population,
 - (c) the number of individuals who entered the remand population by reference to each of the following characteristics—
 - (i) the offence (or type of offence) in respect of which the individual was remanded in custody,
 - (ii) the individual’s gender,
 - (iii) the local authority area in which the individual lived immediately before being remanded in custody,

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- (d) the number of individuals who left the remand population by reference to the individual’s gender,
 - (e) an analysis of the length of time that individuals spent within the remand population,
 - (f) in relation to women within the remand population—
 - (i) the offences (or types of offence) in respect of which women were remanded in custody,
 - (ii) the age profile of women who were remanded in custody,
 - (iii) the number of women who transferred from the remand population to the population of prisoners serving a sentence of imprisonment or detention,
 - (g) the number of bail orders made by reference to the offence (or type of offence) in respect of which the individual was granted bail,
 - (h) the number of bail orders made in respect of—
 - (i) individuals who were accused in solemn proceedings of a violent offence, a sexual offence, or a domestic abuse offence and had a previous conviction on indictment for any such offence, and
 - (ii) individuals who were accused in solemn proceedings of a drug trafficking offence and had a previous conviction on indictment for such an offence,
 - (i) the number of convictions for—
 - (i) bail-related offences, and
 - (ii) other offences (“subsequent offences”) committed while on bail by reference to the subsequent offence (or type of subsequent offence) in respect of which the individual was convicted.
- (3) The report may—
- (a) include information on the operation of the modifications of enactments made by this Part, including in particular the repeal of section 23D of the 1995 Act,
 - (b) include any other information, including gender-specific information, that the Scottish Ministers consider appropriate, and
 - (c) be in any form that they consider appropriate and, in particular, may be part of another document.
- (4) In preparing a report that includes the information mentioned in subsection (3)(a), the Scottish Ministers must consult—
- (a) the chief constable of the Police Service of Scotland,
 - (b) the Lord Advocate,
 - (c) the Scottish Courts and Tribunals Service,
 - (d) each local authority,
 - (e) persons who are providing support services to victims in relation to offences perpetrated against or in respect of those victims,
 - (f) such other persons as the Scottish Ministers consider appropriate.
- (5) In this section—
- “bail-related offence” means an offence under section 27(1)(a) or (b) or (7) of the 1995 Act,
- “domestic abuse offence” means—
- (a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, or

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(b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
“drug trafficking offence” has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995,
“remand population” means the Scottish prison population comprising—
(a) every individual who was accused of, or charged with, an offence and remanded in custody while awaiting trial, and
(b) every individual who was convicted of an offence and remanded in custody while awaiting sentence,
“reporting period” means the period of 3 years beginning with the day on which section 2 comes into force,
“sexual offence” has the meaning given by section 210A(10) and (11) of the 1995 Act,
“violent offence” means any offence (other than a sexual offence) inferring personal violence.

- (6) Any reference in this section to an offence (other than a bail-related offence or a sexual offence) includes reference to—
(a) an attempt, conspiracy or incitement to commit the offence,
(b) aiding, abetting, counselling or procuring the commission of the offence.

7 Recording of reasons for granting bail in certain solemn cases

- (1) This section applies—
(a) where a person is accused of an offence in solemn proceedings and subsection (2) or (3) applies to the person,
(b) for the reporting period.
- (2) This subsection applies where the person—
(a) is accused in the proceedings of an offence falling within subsection (4), and
(b) has a previous conviction on indictment for an offence falling within that subsection.
- (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 such an offence.
- (4) An offence falls within this subsection if it is—
(a) a violent offence,
(b) a sexual offence, or
(c) a domestic abuse offence.
- (5) Where the court grants bail to a person to whom this section applies, the court must—
(a) state its reasons,
(b) have those reasons entered in the record of proceedings.
- (6) For the purposes of this section—
“domestic abuse offence” means—
(a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, or

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- (b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
“drug trafficking offence” has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995,
“reporting period” has the meaning given by section 6(5),
“sexual offence” has the meaning given by section 210A(10) and (11) of the 1995 Act,
“violent offence” means any offence (other than a sexual offence) inferring personal violence.
- (7) Any reference in this section to an offence (other than a sexual offence) includes reference to—
- (a) an attempt, conspiracy or incitement to commit the offence,
 - (b) aiding, abetting, counselling or procuring the commission of the offence.