

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

EXPLANATORY NOTES

INTRODUCTION

Part 1 - Bail

Section 3 – Breach of bail conditions

30. This section amends sections 27 and 28 of the 1995 Act which set out the powers and penalties at the disposal of the court when bail is breached.
31. Subsection (1)(a) increases the custodial penalty available in the sheriff summary court for failure to appear at a hearing or breaching a condition of bail from 3 to 12 months.
32. Subsection (1)(b) inserts a new subsection (4B) to bring the offence under section 27(1)(a) of the 1995 Act of failure to appear in line with the provision which already exist in relation to offences on bail under section 27(3). Where the defence does not challenge the prosecution assertion that the individual;
 - was on bail;
 - was subject to particular bail conditions;
 - failed to appear at a diet; or
 - was given due notice of a dietthat assertion shall be held to be admitted, and the prosecution is not separately required to prove the assertion.
33. Subsection (1)(c) relates to the situation in which an offence has been committed while on bail, and the court is therefore required under section 27 to have regard to that fact when sentencing after conviction. In such cases, section 27 allows the court to impose an aggravated sentence reflecting the breach of trust involved, and section 27(5) makes clear that such a sentence can exceed the maximum penalty for the offence committed currently available.
34. At present the judge who imposes an aggravated sentence under this section must explain the nature and extent of the difference from the sentence which the accused would have received had s/he not been on bail. But where the judge decides not to add any element to the sentence reflecting the bail breach, there is no obligation to explain why. Subsection (1)(c) creates such an obligation, providing that where the judge decides not to increase the sentence to reflect the bail breach, an explanation must be given.
35. Subsection (1)(d) increases the maximum custodial penalty for offences of failure to appear/breach of bail in solemn cases from 2 to 5 years. Subsection 1(e) amends section 27(9). At present, section 27(9) allows the court to impose a penalty for the section 27(2) offence of failure to appear or to comply with a bail condition in addition

to the penalty for the original offence and regardless of whether the total of the two penalties would exceed the maximum penalty that the court is competent to impose for the original offence. The amendment alters this discretion by requiring the court in all cases to impose a section 27(2) penalty in addition to any penalty for the original offence. Subsection (1)(f) makes further provision by inserting a new section 27(9A) which makes it clear that the reference to a section 27(2) penalty being imposed “in addition” to the penalty for the original offence means that the court is required to impose consecutive sentences where the penalties are imprisonment or detention. This will apply whether or not the sentences relate to the same complaint or indictment and whether or not they are imposed at different times. New section 27(9B) makes it clear that this obligation is subject to the usual restriction in section 204A of the 1995 Act where a court is prevented from imposing a sentence that is consecutive to any sentence from which the person has already been released.

36. Subsection (2) amends section 28 of the 1995 Act. At present, section 28 gives a constable power to arrest without warrant an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking, or is likely to break any condition imposed. The accused is brought before a court and after hearing parties, the court may recall the bail order, release the accused or vary the bail order.
37. However, where there has been a bail breach, an accused will not necessarily be arrested under section 28. It would be possible for the accused to be arrested without warrant for the section 27(1) offence of breaching bail (the police have powers to arrest without warrant for statutory offences punishable by imprisonment). Alternatively, the accused may have been arrested for committing a separate substantive offence (whether common law or statutory). It may be discovered later that the circumstances of the offence show that the accused also breached a bail condition. Alternatively a police officer may arrest a person known to have an outstanding warrant. It may subsequently be discovered that the place the person was seen is one which that person is prohibited from entering in terms of a bail order. In all these cases proceedings under section 28 are barred because the arrest was for something else.
38. Subsection (2) is therefore directed at widening out the existing section 28 powers to ensure that a person can be detained and brought before a court under section 28 for breaching bail even although the person was arrested for a breach of bail under section 27 or was arrested in relation to a separate substantive offence and it turns out that the circumstances of that offence show that the person was breaching bail. The amendment ensures that whenever the police arrest someone in these circumstances they may detain them in custody and make use of the provisions set out in section 28(2) – (6) of the 1995 Act to bring that individual to court for the court to consider recalling or altering the bail order.