

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

EXPLANATORY NOTES

INTRODUCTION

Part 1 - Bail

Section 4 – Bail review and appeal

39. This section makes a number of amendments to sections 30 and 32 of the 1995 Act which relate to the processes by which bail decisions may be reviewed or appealed.
40. Subsection (1) amends section 30 of the 1995 Act. Subsection (1)(a) inserts a new subsection (1A) into section 30 of the 1995 Act, placing beyond doubt the right of an accused who has accepted their bail conditions to seek a review. Subsection (1)(b) clarifies the evidence which will be required when an individual seeks a review of the decision to refuse bail, or of the bail conditions imposed. At present the individual does not have to put any new information before the court; in future, the court which reviews the original decision will only be able to grant bail, or alter an existing bail order, where there is a material change in the person's circumstances or the person puts before the court material information which was not available to the court which made the original order.
41. Subsection (2) makes a series of alterations to section 32 of the 1995 Act which, as read with section 24(7) deals with appeals against bail decisions and the conditions imposed. At present there is no requirement on the judge who made the original decision on bail to provide the appeal court with a reasoned account of why that decision was made. These changes alter that position.
42. New subsection (3A) provides that the notice of appeal should be lodged with the clerk of the court from which the appeal is to be taken. The clerk of that court is, in turn, obliged by subsection (3B) to send a copy to the judge who took the original decision, with a request for a report of the judge's reasons. The clerk must also send the notice of appeal to the Clerk of Justiciary. The Clerk of Justiciary must, on receipt of the notice of appeal, in terms of subsection (3F), fix a diet for the bail appeal hearing without delay.
43. Meantime, subsections (3C), (3E) and (3G) require the judge whose decision is being appealed to provide the clerk of court with a report of the reasons for the decision. That report must be sent by the clerk to the Clerk of Justiciary, and in turn the Clerk of Justiciary must send a copy of the report to the accused or his solicitor, and to the Crown Agent.
44. Subsection (3H) covers what happens if the judge's report is not produced in time for the hearing – bail appeals are heard within days and there may be circumstances (for example, judicial illness) where the report is not available. To avoid undue inflexibility these provisions therefore give the High Court sitting as a bail appeal court power to hear the appeal without the judge's report if that report is not available, as well as power to insist that it be produced within a given time. These amendments are based on similar

*These notes relate to the Criminal Proceedings etc. (Reform) (Scotland)
Act 2007 (asp 6) which received Royal Assent on 22 February 2007*

requirements that are imposed in relation to appeals in general in section 113 of the 1995 Act. In line with the practice for general appeals, subsection (3I) provides that the judge's report is to be available only to the High Court and the parties to the case but with scope for an Act of Adjournal to prescribe other persons who may get access.