

SCHEDULE 1

Regulation 3

Monitoring of Scottish bail conditions in another State

Interpretation of this Schedule

1. In this Schedule—

- (a) references to a court, unless the context otherwise requires, are to any of the following—
 - (i) the High Court;
 - (ii) a sheriff court;
 - (iii) a justice of the peace court;
- (b) references to bail conditions are to the conditions imposed on the accused person in question by virtue of section 24(4) of the Criminal Procedure (Scotland) Act 1995.

Request to executing State for recognition of a bail order

2.—(1) When—

- (a) a court—
 - (i) admits an accused person to bail; or
 - (ii) continues a grant of bail to an accused person; and
- (b) the accused person has indicated an intention to reside while on bail in a member State other than the United Kingdom (“the executing State”),

the court may request of the competent authority in the executing State that it recognise some or all of the bail conditions.

(2) But no request may be made under sub-paragraph (1) if—

- (a) in summary proceedings, the first witness has been sworn;
- (b) in solemn proceedings, the jury has been sworn.

(3) In order to make a request under sub-paragraph (1), the court must forward to the central authority or competent authority in the executing State—

- (a) the order granting bail (or a copy of it); and
- (b) a certificate in the form set out in Annex I to the Framework Decision—
 - (i) the contents of which have been certified as accurate; and
 - (ii) which has been signed by someone who holds judicial office in the court making the request.

(4) If—

- (a) English is not an official language of the executing State; and
- (b) the executing State has not deposited with the General Secretariat of the European Council a declaration stating that it will accept a certificate in English,

the court must forward along with the certificate required by sub-paragraph (3)(b) a copy of it translated into an official language of the executing State.

(5) If the court wishes to request under sub-paragraph (1) that the competent authority in the executing State recognise only some of the bail conditions—

- (a) the order granting bail must be framed so as to make clear which conditions the court wants the competent authority in the executing State to recognise; and
- (b) the certificate required by sub-paragraph (3)(b) is to refer to those conditions only.

(6) Before making a request under sub-paragraph (1), unless it is impracticable to do so, the court must attempt to consult the competent authority in the executing State.

Notification to executing State where bail modified or withdrawn or trial date changes

3.—(1) This paragraph applies where—

- (a) an order granting an accused person bail (or a copy of such an order) has been forwarded to a member State (“the executing State”) in accordance with paragraph 2(3)(a);
- (b) the court which forwarded the order (“the responsible court”) has been informed, in accordance with Article 20(2)(e) of the Framework Decision, that the executing State has recognised the order; and
- (c) competence for monitoring the bail conditions has not reverted in terms of Article 11(2) of the Framework Decision.

(2) If the order granting the accused person bail is modified, the responsible court must send the modified order (or a copy of it) to the central authority or competent authority in the executing State.

(3) If the grant of bail to the accused person is withdrawn, the responsible court must inform the central authority or competent authority in the executing State.

(4) If—

- (a) a diet for the trial of the accused person is postponed; and
- (b) the postponed trial diet is to begin after the day specified by sub-paragraph (5),

the responsible court must inform the central authority or competent authority in the executing State that monitoring of the bail conditions is likely to continue to be needed until the day falling 7 working days after the day fixed for the postponed trial diet.

(5) The day, for the purpose of sub-paragraph (4)(b), is—

- (a) the final day of the period which is specified in the certificate mentioned in paragraph 2(3)
 - (b) as being the period for which monitoring of the bail conditions is likely to be needed; or
- (b) if, under sub-paragraph (4), the responsible court has previously informed the central authority or competent authority in the executing State that monitoring of the bail conditions is likely to be needed until a later day than that specified by head (a), that later day.

Notification to parties on receipt of information from executing State

4.—(1) As soon as practicable after it receives information from a member State in accordance with Article 20(2)(e), (f) or (g) of the Framework Decision, a court must notify the accused person to whom the information relates.

(2) As soon as practicable after it receives, in accordance with any provision of the Framework Decision, information from a member State that relates to an accused person who has been granted bail, a court must notify the prosecutor in the proceedings against the accused person.

Bail review in light of information from executing State

5.—(1) On receiving notification under paragraph 4—

- (a) the prosecutor; or
- (b) the accused person,

may apply for a bail review under this paragraph to the court which admitted the accused person to bail.

(2) In a bail review under this paragraph the court may—

- (a) withdraw the grant of bail; or
- (b) continue the grant of bail, either on the same or different conditions.

(3) Nothing in this paragraph affects the right of any person to seek a review or an appeal under sections 30 to 32 of the Criminal Procedure (Scotland) Act 1995.

Bail review: further provision

6.—(1) On receipt of an application for a bail review under paragraph 5, the court—

- (a) must intimate the application to the other party; and
- (b) may, where it considers that the interests of justice so require, grant warrant to arrest the accused person.

(2) Before determining the application, the court must give the other party an opportunity to be heard.

(3) Despite sub-paragraph (2), the court may grant the application without giving the other party an opportunity to be heard if that party consents.

(4) In this paragraph, “the other party” means—

- (a) the prosecutor, where the application has been made by the accused person;
- (b) the accused person, where the application has been made by the prosecutor.

Requirement to apply for bail review before maximum monitoring period ends

7.—(1) Sub-paragraph (2) applies (subject to sub-paragraph (3)) where—

- (a) an order granting an accused person bail (or a copy of such an order) has been forwarded to a member State (“the executing State”) in accordance with paragraph 2(3)(a);
- (b) the court which forwarded the order has been informed, in accordance with Article 20(2)(b) of the Framework Decision, that the executing State can monitor the bail conditions only for a given period;
- (c) competence for monitoring the bail conditions has not reverted in terms of Article 11(2) of the Framework Decision; and
- (d) the grant of bail has not been withdrawn.

(2) Fourteen working days before the end of the period mentioned in sub-paragraph (1)(b), the prosecutor in the proceedings against the accused person must apply for a bail review under paragraph 5.

(3) Sub-paragraph (2) does not apply if the grant of bail to the accused person has been reviewed by a court within 14 working days of the day that sub-paragraph (2) would have required an application for a bail review to be made but for this sub-paragraph.

(4) If sub-paragraph (2) does not apply by virtue of sub-paragraph (3), the prosecutor must inform the court to which the prosecutor would otherwise have been required to make a bail application.

(5) On receiving information under sub-paragraph (4), the court must notify the central authority or competent authority in the executing State that monitoring of the bail conditions continues to be needed until the day falling 7 working days after the day appointed for the accused person’s trial.

Bail review required by paragraph 7: further provision

8.—(1) In an application for a bail review made in accordance with paragraph 7(2), the prosecutor may seek the continuation of bail on the same conditions.

(2) For hearing an application made in accordance with paragraph 7(2), the court must fix a diet for a day not more than 13 working days after the application was made.

(3) If the court continues a grant of bail at a bail review applied for in accordance with paragraph 7(2), the court must notify the central authority or competent authority in the executing State that monitoring of the bail conditions continues to be needed until the day falling 7 working days after the day appointed for the accused person's trial.

Dialogue with the executing State

9.—(1) Sub-paragraph (2) applies where—

- (a) an order granting an accused person bail (or a copy of such an order) has been forwarded to a member State (“the executing State”) in accordance with paragraph 2(3)(a); and
- (b) the court which forwarded the order (“the responsible court”) has been informed, in accordance with Article 20(2)(e) of the Framework Decision, that the executing State has recognised the order.

(2) The responsible court is to consult and liaise with the central authority and competent authority in the executing State to facilitate the smooth and efficient monitoring of the bail conditions.

(3) In consulting and liaising under—

- (a) this paragraph; and
- (b) paragraph 2(6),

a court must co-operate with the central authority and competent authority in the other member State with a view to the exchange of any useful information.

(4) Useful information, for the purpose of sub-paragraph (3), includes—

- (a) information for verifying the identity and place of residence of the person to whom the decision on supervision measures relates (or will relate); and
- (b) relevant information taken from that person's criminal records in accordance with applicable legislation, including Part 6 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014.

(5) Any correspondence required by, or for the purposes of, this Schedule between—

- (a) a court; and
- (b) the central authority or competent authority in a member State,

is to be conducted on the responsible court's behalf by the holder of an office mentioned in section 63(2) of the Judiciary and Courts (Scotland) Act 2008⁽¹⁾.

(1) 2008 asp 6.