

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 1 - Bail**

##### ***Section 2 – Bail and bail conditions***

22. This section makes a series of changes to sections 24 and 25 of the 1995 Act.
23. Subsection (1)(a) inserts new subsections into section 24 of the 1995 Act. Section 24(2A) provides that where the court grants or refuses bail, it must state its reasons for that decision. This will apply to any bail decision in the 1995 Act. At present there is no formal requirement for judges to give reasons. Strasbourg case law makes clear that when a court considers it appropriate to detain a person it must set out the reasons for their decision – see *Vehbi Selcuk v Turkey 2006, application No 00021768/02*
24. Section 24(2B) of the 1995 Act provides that when a court, in solemn or summary proceedings, grants bail to a person accused of a sexual offence, without imposing any further (“special”) conditions, it must explain why it did not consider such conditions necessary. Examples of further conditions might involve a requirement not to contact named persons or enter a particular house, street, or area; or to attend a named police office at defined intervals (perhaps weekly). This is a non-exhaustive list.
25. Subsection (1)(b) amends section 24(4)(b)(ii) so that the court can attach additional conditions to a bail order to facilitate an identification parade or other identification procedure.
26. Subsection (1)(c) adds an additional standard bail condition to the list at section 24(5) that requires the accused not to cause alarm or distress to witnesses. At present, the only standard condition relating to witnesses requires the accused not to “interfere with witnesses”. This condition will not always deal adequately with the sort of behaviour that can be of concern as it may require the accused to threaten or intimidate the witness in some way specifically intended to deter them from giving evidence rather than general abuse *per se*. This provision therefore makes clear for the avoidance of doubt that in relation to witnesses, all behaviour which causes or is likely to cause alarm or distress is prohibited.
27. Subsection (2) amends section 25 of the 1995 Act. Subsection (2)(a) creates new subsection (A1), which provides that when bail is granted to an accused who is present in court, the implications of the conditions of bail and the consequences of their breach, should be explained by the court to the accused. New subsections (B1) and (C1) further provide that in all cases the bail conditions and consequences of bail breach should be given to the accused in written form, whether as part of the bail order or in another document.

28. The court must also explain the need to seek the court's consent in certain circumstances to a change in the 'domicile of citation'. This will be the address contained in the bail order and is the address at which formal communications relating to the case will be sent to the accused. This need not be the address at which s/he normally resides – it may, for example, be care of his or her solicitor. Under the law as it stands the accused may ask the court to alter his or her domicile of citation, but is under no obligation to do so if s/he moves house.
29. However, subsection (2)(c) inserts into section 25 of the 1995 Act two new subsections providing that where the domicile of citation is the accused's normal place of residence, and the accused moves house, the accused must within 7 days apply to the court for consent to alter the domicile of citation accordingly. Failure so to do is an offence, and penalties for that offence are prescribed.