Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART III

BAIL

[F1 22A Consideration of bail on first appearance

(1) On the first occasion on which—

(a) a person accused on petition is brought before the sheriff prior to committal until liberated in due course of law; or

(b) a person charged on complaint with an offence is brought before a judge having jurisdiction to try the offence,

the sheriff or, as the case may be, the judge shall, after giving that person and the prosecutor an opportunity to be heard [F2]. . . , either admit or refuse to admit that person to bail.

[[F3](2) Admittance to or refusal of bail shall be determined before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day on which the person accused or charged is brought before the sheriff or judge.**]**

(3) If, by **[**[F4]that time**]**, the sheriff or judge has not admitted or refused to admit the person accused or charged to bail, then that person shall be forthwith liberated.

(4) This section applies whether or not the person accused or charged is in custody when that person is brought before the sheriff or judge.**]**

Textual Amendments

F1 S. 22A inserted before s. 23 (9.8.2000) by 2000 asp 9, **s. 1**

F2 Words in s. 22A(1) repealed (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 6(1)(a)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

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F3 S. 22A(2) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 6(1)(b)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F4 Words in s. 22A(3) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 6(1)(c)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

23 Bail applications.

(1) Any person accused on petition of a crime [F5]. . . shall be entitled immediately, on any **[**[F6](other than the first)**]** occasion on which he is brought before the sheriff prior to his committal until liberated in due course of law, to apply to the sheriff for bail, and the prosecutor shall be entitled to be heard against any such application.

(2) The sheriff shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.

(3) Where an accused is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

(4) Where bail is refused before committal until liberation in due course of law on an application under subsection (1) above, the application for bail may be renewed after such committal.

(5) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been committed until liberation in due course of law for any crime or offence, [F7]. . ., and having given the prosecutor an opportunity to be heard, admit or refuse to admit the person to bail.

[[F8](6) Any person charged on complaint with an offence shall, on any (other than the first) occasion on which he is brought before a judge having jurisdiction to try the offence, be entitled to apply to the judge for bail and the prosecutor shall be entitled to be heard against any such application.**]**

(7) An application under subsection (5) or (6) above shall be disposed of **[**[F9]before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day of**]** its presentation to the judge, failing which the accused shall be forthwith liberated.

(8) This section applies whether or not the accused is in custody at the time he appears for disposal of his application.

Textual Amendments

F5 Words in s. 23(1) repealed (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(1)(a)(i)**

F6 Words in s. 23(1) inserted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(1)(a)(ii)**

F7 Words in s. 23(5) repealed (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(1)(b)**

F8 S. 23(6) substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(1)(c)**

F9 Words in s. 23(7) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 6(2)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

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[F10 23A Bail and liberation where person already in custody

(1) A person may be admitted to bail under section 22A , **[**F11 23, 65(8C) or 107A(7)(b)**]** of this Act although in custody—

(a) having been refused bail in respect of another crime or offence; or

(b) serving a sentence of imprisonment.

(2) A decision to admit a person to bail by virtue of subsection (1) above does not liberate the person from the custody mentioned in that subsection.

(3) The liberation under section **[**F12 22A(3), 23(7) or 107A(7)(b)**]** of this Act of a person who may be admitted to bail by virtue of subsection (1) above does not liberate that person from the custody mentioned in that subsection.

(4) In subsection (1) above, "another crime or offence" means a crime or offence other than that giving rise to the consideration of bail under section 22A , **[**F13 23, 65(8C) or 107A(7)(b)**]** of this Act.**]**

Textual Amendments

F10 S. 23A inserted (9.8.2000) by 2000 asp 9, **s. 2**

F11 Words in s. 23A(1) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 35(a)**; S.S.I. 2011/178, art. 2, sch.

F12 Words in s. 23A(3) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 35(b)**; S.S.I. 2011/178, art. 2, sch.

F13 Words in s. 23A(4) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 35(a)**; S.S.I. 2011/178, art. 2, sch.

[F14 23B Entitlement to bail and the court's function

(1) Bail is to be granted to an accused person—

(a) except where—

(i) by reference to section 23C of this Act; and

(ii) having regard to the public interest,

there is good reason for refusing bail;

(b) subject to section 23D of this Act.

(2) In determining a question of bail in accordance with subsection (1) above, the court is to consider the extent to which the public interest could, if bail were granted, be safeguarded by the imposition of bail conditions.

(3) Reference in subsections (1)(a)(ii) and (2) above to the public interest includes (without prejudice to the generality of the public interest) reference to the interests of public safety.

(4) The court must (without prejudice to any other right of the parties to be heard) give the prosecutor and the accused person an opportunity to make submissions in relation to a question of bail.

(5) The attitude of the prosecutor towards a question of bail (including as to bail conditions) does not restrict the court's exercise of its discretion in determining the question in accordance with subsection (1) above.

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(6) For the purpose of so determining a question of bail (including as to bail conditions), the court may request the prosecutor or the accused person's solicitor or counsel to provide it with information relevant to the question.

(7) However, whether that party gives the court opinion as to any risk of something occurring (or any likelihood of something not occurring) is a matter for that party to decide.

Textual Amendments

F14 Ss. 23B-23D inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 1**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

23C Grounds relevant as to question of bail

(1) In any proceedings in which a person is accused of an offence, the following are grounds on which it may be determined that there is good reason for refusing bail—

(a) any substantial risk that the person might if granted bail—

(i) abscond; or

(ii) fail to appear at a diet of the court as required;

(b) any substantial risk of the person committing further offences if granted bail;

(c) any substantial risk that the person might if granted bail—

(i) interfere with witnesses; or

(ii) otherwise obstruct the course of justice,

in relation to himself or any other person;

(d) any other substantial factor which appears to the court to justify keeping the person in custody.

(2) In assessing the grounds specified in subsection (1) above, the court must have regard to all material considerations including (in so far as relevant in the circumstances of the case) the following examples—

(a) the—

(i) nature (including level of seriousness) of the offences before the court;

(ii) probable disposal of the case if the person were convicted of the offences;

(b) whether the person was subject to a bail order when the offences are alleged to have been committed;

(c) whether the offences before the court are alleged to have been committed—

(i) while the person was subject to another court order;

(ii) while the person was on release on licence or parole;

(iii) during a period for which sentence of the person was deferred;

(d) the character and antecedents of the person, in particular—

(i) the nature of any previous convictions of the person (including convictions **[**F15by courts outside **[**F16Scotland**]]**);

(ii) whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise);

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(iii) whether the person has previously breached the terms of any release on licence or parole (by committing an offence or otherwise);

(iv) whether the person is serving or recently has served a sentence of imprisonment in connection with a matter referred to in sub-paragraphs (i) to (iii) above;

(e) the associations and community ties of the person.

Textual Amendments

F14 Ss. 23B-23D inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 1**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F15 Words in s. 23C(2)(d)(i) substituted (13.12.2010 for all purposes in respect of offences committed on or after this date) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 71(1), 206(1), **Sch. 4 para. 2**; S.S.I. 2010/413, **art. 2**, Sch.

F16 Word in s. 23C(2)(d)(i) substituted (31.12.2020) by The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), **13(2)** (with reg. 16)

23D Restriction on bail in certain solemn cases

(1) Where subsection (2) or (3) below applies, a person is to be granted bail in solemn proceedings only if there are exceptional circumstances justifying bail.

(2) This subsection applies where the person—

(a) is accused in the proceedings of **[**F17an offence falling within subsection (3A)**]**; and

(b) has a previous conviction on indictment for **[**F18an offence falling within subsection (3A)**]**.

(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 a drug trafficking offence.

F19(3A) **[** An offence falls within this subsection if it is—

(a) a violent offence,

(b) a sexual offence, or

(c) a domestic abuse offence.**]**

(4) For the purposes of this section—

"drug trafficking offence" has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995 (c. 43);

[F20"domestic abuse offence" means—

(a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, or

(b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;**]**

"sexual offence" has the meaning given by section 210A(10) and (11) of this Act;

"violent offence" means any offence (other than a sexual offence) inferring personal violence.

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(5) Any reference in this section to a conviction on indictment for **[**F21a type of offence**]** includes—

(a) a conviction on indictment in England and Wales or Northern Ireland for an equivalent offence;

(b) **[**F22if the court considers appropriate**]** a conviction in a member State of the European Union (F23...) which is equivalent to conviction on indictment for an equivalent offence.

(6) Any issue of equivalence arising in pursuance of subsection (5) above is for the court to determine.

(7) This section is without prejudice to section 23C of this Act.**]**

Textual Amendments

F14 Ss. 23B-23D inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 1**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F17 Words in s. 23D(2)(a) substituted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 1(2)(a)(i)**; S.S.I. 2018/387, reg. 2 (with reg. 6)

F18 Words in s. 23D(2)(b) substituted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 1(2)(a)(ii)**; S.S.I. 2018/387, reg. 2 (with reg. 6)

F19 S. 23D(3A) inserted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 1(2)(b)**; S.S.I. 2018/387, reg. 2 (with reg. 6)

F20 Words in s. 23D(4) inserted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 1(2)(c)**; S.S.I. 2018/387, reg. 2 (with reg. 6)

F21 Words in s. 23D(5) substituted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 1(2)(d)**; S.S.I. 2018/387, reg. 2 (with reg. 6)

F22 Words in s. 23D(5)(b) inserted (31.12.2020) by The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), **13(3)(a)** (with reg. 16)

F23 Words in s. 23D(5)(b) omitted (31.12.2020) by virtue of The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), **13(3)(b)** (with reg. 16)

24 Bail and bail conditions.

(1) All crimes and offences F24. . . are bailable.

(2) Nothing in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.

[F25(2A) Whenever the court grants or refuses bail, it shall state its reasons.

(2B) Where the court—

(a) grants bail to a person accused of a sexual offence (having the meaning given by section 210A(10) and (11) of this Act); and

(b) does so without imposing on the accused further conditions under subsection (4)(b)(i) below,

the court shall also state why it considers in the circumstances of the case that such conditions are unnecessary.**]**

(3) It shall not be lawful to grant bail or release for a pledge or deposit of money, and—

(a) release on bail may be granted only on conditions which subject to subsection (6) below, shall not include a pledge or deposit of money;

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(b) liberation may be granted by the police under **[**F26section 25 of the Criminal Justice (Scotland) Act 2016**]**.

(4) In granting bail the court or, as the case may be, the Lord Advocate shall impose on the accused—

(a) the standard conditions; and

(b) such further conditions as the court or, as the case may be, the Lord Advocate considers necessary to secure—

(i) that the standard conditions are observed; F27...

F27(ii) . . . . . .

(5) The standard conditions referred to in subsection (4) above are conditions that the accused—

(a) appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice; **[**F28 or at which he is required by this Act to appear**]**

(b) does not commit an offence while on bail;

(c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person; F29. . .

[F30(ca) does not behave in a manner which causes, or is likely to cause, alarm or distress to witnesses;**]**

[F31(cb) whenever reasonably instructed by a constable to do so—

(i) participates in an identification parade or other identification procedure; and

(ii) allows any print, impression or sample to be taken from the accused;**]**

(d) makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged **[**F32; and

(e) where the (or an) offence in respect of which he is admitted to bail is one **[**F33listed in subsection (7A)(b)**]**, does not seek to obtain, otherwise than by way of a solicitor, any precognition of or statement by the complainer in relation to the subject matter of the offence.**]**

(6) The court or, as the case may be, the Lord Advocate may impose as one of the conditions of release on bail a requirement that the accused or a cautioner on his behalf deposits a sum of money in court, but only where the court or, as the case may be, the Lord Advocate is satisfied that the imposition of such condition is appropriate to the special circumstances of the case.

[F34(6A) Subsection (6) above does not apply in relation to an accused admitted to bail under section 65(8C) of this Act.**]**

(7) In any enactment, including this Act and any enactment passed after this Act—

(a) any reference to bail shall be construed as a reference to release on conditions in accordance with this Act or to conditions imposed on bail, as the context requires;

(b) any reference to an amount of bail fixed shall be construed as a reference to conditions, including a sum required to be deposited under subsection (6) above;

(c) any reference to finding bail or finding sufficient bail shall be construed as a reference to acceptance of conditions imposed or the finding of a sum required to be deposited under subsection (6) above.

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[F35(7A) For the purpose of subsection (5)(e)—

(a) "complainer" means the person against whom the offence is alleged to have been committed,

(b) the list is—

(i) an offence to which section 288C applies (certain sexual offending),

(ii) an offence to which section 288DC applies (domestic abuse cases).**]**

(8) In this section and sections 25 and 27 to 29 of this Act, references to an accused and to appearance at a diet shall include references respectively to an appellant and to appearance at the court on the day fixed for the hearing of an appeal.

Textual Amendments

F24 Words in s. 24(1) repealed (9.8.2000) by 2000 asp 9, **s. 3(1)**

F25 S. 24(2A)(2B) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 2(1)(a)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F26 Words in s. 24(3)(b) substituted (25.1.2018) by The Criminal Justice (Scotland) Act 2016 (Consequential and Supplementary Modifications) Regulations 2017 (S.S.I. 2017/452), reg. 1, **sch. para. 12(2)** (with reg. 2(2))

F27 S. 24(4)(b)(ii) and preceding word repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 58(a)**, 206(1); S.S.I. 2011/178, art. 2, sch.

F28 Words in s. 24(5)(a) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 5(a)**; S.S.I. 2004/405, **art. 2** Sch. 1 (subject to arts. 3-5)

F29 Word in s. 24(5) repealed (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 5(1)(a)**; S.S.I. 2002/443, **art. 3**

F30 S. 24(5)(ca) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 2(1)(c)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F31 S. 24(5)(cb) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 58(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.

F32 S. 24(5)(e) and preceding word inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 5(1)(b)**; S.S.I. 2002/443, **art. 3**

F33 Words in s. 24(5)(e) substituted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 2(2)(a)**; S.S.I. 2018/387, reg. 2 (with reg. 6)

F34 S. 24(6A) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 5(b)**; S.S.I. 2004/405, **art. 2** Sch. 1 (subject to arts. 3-5)

F35 S. 24(7A) substituted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 2(2)(b)**; S.S.I. 2018/387, reg. 2 (with reg. 6)

24A Bail conditions: remote monitoring of restrictions on movements

F36 . . . . . .

Textual Amendments

F36 Ss. 24A-24E repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 59**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

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24B Regulations as to power to impose remote monitoring requirements under section 24A

F37 . . . . . .

Textual Amendments

F37 Ss. 24A-24E repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 59**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

24C Monitoring of compliance in pursuance of requirements imposed under section 24A

F38 . . . . . .

Textual Amendments

F38 Ss. 24A-24E repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 59**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

24D Remote monitoring

F39 . . . . . .

Textual Amendments

F39 Ss. 24A-24E repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 59**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

24E Documentary evidence in proceedings for breach of bail conditions being remotely monitored

F40 . . . . . .

Textual Amendments

F40 Ss. 24A-24E repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 59**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

[F41[F42 24F] Bail: extradition proceedings

(1) In the application of the provisions of this Part by virtue of section 9(2) or 77(2) of the Extradition Act 2003 (judge's powers at extradition hearing), those provisions apply with the modifications that—

(a) references to the prosecutor are to be read as references to a person acting on behalf of the territory to which extradition is sought;

(b) the right of the Lord Advocate mentioned in section 24(2) of this Act applies to a person subject to extradition proceedings as it applies to a person charged with any crime or offence;

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(c) the following do not apply—

(i) paragraph (b) of section 24(3); and

(ii) subsection (3) of section 30; and

(d) sections 28(1) and 33 apply to a person subject to extradition proceedings as they apply to an accused.

(2) Section 32 of this Act applies in relation to a refusal of bail, the amount of bail or a decision to allow bail or ordain appearance in proceedings under this Part as the Part applies by virtue of the sections of that Act of 2003 mentioned in subsection (1) above.

(3) The Scottish Ministers may, by order, for the purposes of section 9(2) or 77(2) of the Extradition Act 2003 make such amendments to this Part as they consider necessary or expedient.

(4) The order making power in subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.**]**

Textual Amendments

F41 S. 24A inserted (1.1.2004) by Extradition Act 2003 (c. 41), **ss. 199**, 221; S.I. 2003/3103, **art. 2** (subject to arts. 3-5)

F42 S. 24F: s. 24A renumbered as 24F (31.1.2005) by The Criminal Procedure (Amendment) (Scotland) Act 2004 (Incidental, Supplemental and Consequential Provisions) Order 2005 (S.S.I. 2005/40), **art. 4(2)**

25 Bail conditions: supplementary.

[F43(A1) When granting bail, the court shall (if the accused is present) explain to the accused in ordinary language—

(a) the effect of the conditions imposed;

(b) the effect of the requirement under subsection (2B) below; and

(c) the consequences which may follow a breach of any of those conditions or that requirement.

(B1) The accused shall (whether or not the accused is present when bail is granted) be given a written explanation in ordinary language of the matters mentioned in paragraphs (a) to (c) of subsection (A1) above.

(C1) Such a written explanation may be contained in the copy of the bail order given to the accused or in another document.**]**

(1) The court shall specify in the order granting bail, a copy of which shall be given to the accused—

(a) the conditions imposed; and

[F44(aa) that breach of a condition imposed is an offence and renders the accused liable to arrest, prosecution and punishment under this Act;**]**

(b) an address, within the United Kingdom (being the accused's normal place of residence or such other place as the court may, on cause shown, direct) which, subject to subsection (2) below, shall be his proper domicile of citation.

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(2) The court may on application in writing by the accused while he is on bail alter the address specified in the order granting bail, and this new address shall, as from such date as the court may direct, become his proper domicile of citation; and the court shall notify the accused of its decision on any application under this subsection.

[[F45](2A) Where an application is made under subsection (2) above—

(a) the application shall be intimated by the accused immediately and in writing to the Crown Agent and for that purpose the application shall be taken to be intimated to the Crown Agent if intimation of it is sent to the procurator fiscal for the sheriff court district in which bail was granted ; and

(b) the court shall, before determining the application, give the prosecutor an opportunity to be heard.**]**

[[F46](2B) Where the domicile of citation specified in an order granting bail ceases to be the accused's normal place of residence, the accused must make an application under subsection (2) above within 7 days of that happening.

(2C) A person who without reasonable excuse contravenes subsection (2B) above is guilty of an offence and is liable—

(a) on conviction in the JP court, to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 60 days or to both;

(b) in any other case, to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.**]**

(3) In this section "proper domicile of citation" means the address at which the accused may be cited to appear at any diet relating to the offence with which he is charged or an offence charged in the same proceedings as that offence or to which any other intimation or document may be sent; and any citation at or the sending of an intimation or document to the proper domicile of citation shall be presumed to have been duly carried out.

[[F47](4) In this section, references to the court (other than in subsection (2A)) shall, in relation to a person who has been admitted to bail by the Lord Advocate, be read as if they were references to the Lord Advocate.**]**

Textual Amendments

F43 S. 25(A1)-(C1) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 2(2)(a)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F44 S. 25(1)(aa) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 2(2)(b)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F45 S. 25(2A) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 18(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5) (as amended by S.S.I. 2005/40, **art. 3(4)**)

F46 S. 25(2B)(2C) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 2(2)(c)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

F47 S. 25(4) inserted (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 6**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

Modifications etc. (not altering text)

C1 S. 25(2C)(a) applied (10.12.2007) by The District Courts and Justices of the Peace (Scotland) Order 2007 (S.S.I. 2007/480), **art. 4(1)(a)**

Changes to legislation: *Criminal Procedure (Scotland) Act 1995, PART III is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F48 25A Failure to accept conditions of bail under section 65(8C): continued detention of accused

An accused who—

(a) is, by virtue of subsection (4) of section 65 of this Act, entitled to be admitted to bail; but

(b) fails to accept any of the conditions imposed by the court on bail under subsection (8C) of that section,

shall continue to be detained under the committal warrant for so long as he fails to accept any of those conditions.**]**

Textual Amendments

F48 S. 25A inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 7**; S.S.I. 2004/405, **art. 2** Sch. 1 (subject to arts. 3-5)

F49 26 . . . . . .

Textual Amendments

F49 S. 26 repealed (9.8.2000) by 2000 asp 9, **s. 3(2)**

27 Breach of bail conditions: offences.

(1) Subject to subsection (7) below, an accused who having been granted bail fails without reasonable excuse—

(a) to appear at the time and place appointed for any diet of which he has been given due notice **[**F50or at which he is required by this Act to appear**]**; or

(b) to comply with any other condition imposed on bail,

shall, subject to subsection (3) below, be guilty of an offence and liable on conviction to the penalties specified in subsection (2) below.

(2) The penalties mentioned in subsection (1) above are—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the **[**F51JP court**]**, not exceeding 60 days; or

(ii) in any other case, not exceeding **[**F52**12]** months.

(3) Where, and to the extent that, the failure referred to in subsection (1)(b) above consists in the accused having committed an offence while on bail (in this section referred to as "the subsequent offence"), he shall not be guilty of an offence under that subsection but, subject to subsection (4) below, the court which sentences him for the subsequent offence shall, in determining the appropriate sentence or disposal for that offence, have regard to—

(a) the fact that the offence was committed by him while on bail and the number of bail orders to which he was subject when the offence was committed;

(b) any previous conviction of the accused of an offence under subsection (1)(b) above; and

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(c) the extent to which the sentence or disposal in respect of any previous conviction of the accused differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.

[F53**[**F54(3A) The reference in subsection (3)(b) to any previous conviction of an offence under subsection (1)(b) includes—

(a) any previous conviction by a court in England and Wales or Northern Ireland, and

(b) if the court considers appropriate, any previous conviction by a court in a member State of the European Union,

of an offence that is equivalent to an offence under subsection (1)(b).**]**

(3B) The references in subsection (3)(c) to subsection (3) are to be read, in relation to a previous conviction by a court referred to in subsection (3A), as references to any provision that is equivalent to subsection (3).

(3C) Any issue of equivalence arising in pursuance of subsection (3A) or (3B) is for the court to determine.**]**

(4) The court shall not, under subsection (3) above, have regard to the fact that the subsequent offence was committed while the accused was on bail unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

[F55(4A) The fact that the subsequent offence was committed while the accused was on bail shall, unless challenged—

(a) in the case of proceedings on indictment, by giving notice of a preliminary objection **[**F56in accordance with section 71(2) or 72(6)(b)(i)**]** of this Act; or

(b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.**]**

[F57(4B) In any proceedings in relation to an offence under subsection (1) above or subsection 7 below, the fact that (as the case may be) an accused—

(a) was on bail;

(b) was subject to any particular condition of bail;

(c) failed to appear at a diet; or

(d) was given due notice of a diet,

shall, unless challenged in the manner described in paragraph (a) or (b) of subsection (4A) above, be held as admitted.**]**

(5) Where the maximum penalty in respect of the subsequent offence is specified by or by virtue of any enactment, that maximum penalty shall, for the purposes of the court's determination, by virtue of subsection (3) above, of the appropriate sentence or disposal in respect of that offence, be increased—

(a) where it is a fine, by the amount for the time being equivalent to level 3 on the standard scale; and

(b) where it is a period of imprisonment—

(i) as respects a conviction in the High Court or the sheriff court, by 6 months; and

(ii) as respects a conviction in the **[**F51JP court**]**, by 60 days,

notwithstanding that the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.

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(6) Where the sentence or disposal in respect of the subsequent offence is, by virtue of subsection (3) above, different from that which the court would have imposed but for that subsection, the court shall state the extent of and the reasons for that difference.

[F58(6A) Where, despite the requirement to have regard to the matters specified in paragraphs (a) to (c) of subsection (3) above, the sentence or disposal in respect of the subsequent offence is not different from that which the court would have imposed but for that subsection, the court shall state (as appropriate, by reference to those matters) the reasons for there being no difference.**]**

(7) An accused who having been granted bail in relation to solemn proceedings fails without reasonable excuse to appear at the time and place appointed for any diet of which he has been given due notice (where such diet is in respect of solemn proceedings) shall be guilty of an offence and liable on conviction on indictment to the following penalties—

(a) a fine; and

(b) imprisonment for a period not exceeding **[**F59**5]** years.

(8) At any time before the trial of an accused under solemn procedure for the original offence, it shall be competent—

(a) to amend the indictment to include an additional charge of an offence under this section;

(b) to include in the list of witnesses or productions relating to the original offence, witnesses or productions relating to the offence under this section.

[F60(8A) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under this section.**]**

(9) **[**F61A penalty under subsection (2) or (7) above shall**]** be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

[F62(9A) The reference in subsection (9) above to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—

(a) where the sentences are imposed at the same time (whether or not in relation to the same complaint or indictment), framing the sentences so that they have effect consecutively;

(b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.

(9B) Subsection (9A)(b) above is subject to section 204A of this Act.**]**

(10) A court which finds an accused guilty of an offence under this section may remit the accused for sentence in respect of that offence to any court which is considering the original offence.

(11) In this section "the original offence" means the offence with which the accused was charged when he was granted bail or an offence charged in the same proceedings as that offence.

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Textual Amendments

F50 Words in s. 27(1)(a) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 8(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

F51 Words in s. 27(2)(b)(i)(5)(b)(ii) substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 26(c)**; S.S.I. 2008/42, **art. 3**, Sch.; S.S.I. 2008/192, **art. 3**, Sch.; S.S.I. 2008/329, **art. 3**, Sch.; S.S.I. 2008/362, **art. 3**, Sch.; S.S.I. 2009/432, **art. 3**, Schs. 1, 2

F52 Word in s. 27(2)(b)(ii) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 3(1)(a)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

F53 S. 27(3A) substituted (31.12.2020) by The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), **13(4)** (with reg. 16)

F54 S. 27(3A)-(3C) inserted (13.12.2010 for all purposes in respect of offences committed on or after this date) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 71(1), 206(1), **Sch. 4 para. 3**; S.S.I. 2010/413, **art. 2**, Sch.

F55 S. 27(4A) inserted (4.7.1996) by 1996 c. 25, **s. 73(2)**

F56 Words in s. 27(4A)(a) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 8(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

F57 S. 27(4B) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 3(1)(b)**, 84 (as amended by S.S.I. 2007/540, art. 3); S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F58 S. 27(6A) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 3(1)(c)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

F59 Word in s. 27(7)(b) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 3(1)(d)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

F60 S. 27(8A) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 62(1)**, 206(1); S.S.I. 2011/178, art. 2, sch.

F61 Words in s. 27(9) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 3(1)(e)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

F62 S. 27(9A)(9B) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 3(1)(f)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

28 Breach of bail conditions: arrest of offender, etc.

(1) A constable may 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 on his bail.

[F63(1ZA) Where—

(a) a constable who is not in uniform arrests a person under subsection (1), and

(b) the person asks to see the constable's identification,

the constable must show identification to the person as soon as reasonably practicable.**]**

[F64(1A) Where an accused who has been released on bail is arrested by a constable (otherwise than under subsection (1) above), the accused may be detained in custody under this subsection if the constable has reasonable grounds for suspecting that the accused has breached, or is likely to breach, any condition imposed on his bail.

(1B) Subsection (1A) above—

(a) is without prejudice to any other power to detain the accused;

(b) applies even if release of the accused would be required but for that subsection.**]**

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(2) An accused who is arrested under **[**F65subsection (1) above, or is detained under subsection (1A) above,**]** shall wherever practicable be brought before the court to which his application for bail was first made not later than in the course of the first day after his arrest, such day not being, subject to subsection (3) below, a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act.

(3) Nothing in subsection (2) above shall prevent an accused being brought before a court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 8, sitting on such day for the disposal of criminal business.

[F66(3A) If—

(a) a person is in custody only by virtue of subsection (1) or (1A), and

(b) in the opinion of a constable there are no reasonable grounds for suspecting that the person has broken, or is likely to break, a condition imposed on the person's bail,

the person must be released from custody immediately.

(3B) An accused is deemed to be brought before a court under subsection (2) or (3) if the accused appears before it by means of a live television link (by virtue of a determination by the court that the person is to do so by such means).**]**

(4) Where an accused is brought before a court under subsection (2) or (3) above, the court, after hearing the parties, may—

(a) recall the order granting bail;

(b) release the accused under the original order granting bail; or

(c) vary the order granting bail so as to contain such conditions as the court thinks it necessary to impose to secure that the accused complies with the requirements of paragraphs (a) to (d) of section 24(5) of this Act.

[F67(4A) In the case of an accused released on bail by virtue of section 65(8C) of this Act—

(a) subsection (2) above shall have effect as if the reference to the court to which his application for bail was first made were a reference to the court or judge which admitted him to bail under that section; and

(b) subsection (4) above shall not apply and subsection (4B) below shall apply instead.

(4B) Where an accused referred to in subsection (4A) above is, under subsection (2) or (3) above, brought before the court or judge which admitted him to bail under section 65(8C)—

(a) the court or judge shall give the prosecutor an opportunity to make an application under section 65(5) of this Act; and

(b) if the prosecutor does not make such an application, or if such an application is made but is refused, the court or judge may—

(i) release the accused under the original order granting bail; or

(ii) vary the order granting bail so as to contain such conditions as the court or judge thinks necessary to impose to secure that the accused complies with the requirements of paragraphs (a) to (d) of section 24(5) of this Act.**]**

(5) The same rights of appeal shall be available against any decision of the court under subsection (4) above as were available against the original order of the court relating to bail.

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(6) For the purposes of this section and section 27 of this Act, an extract from the minute of proceedings, containing the order granting bail and bearing to be signed by the clerk of court, shall be sufficient evidence of the making of that order and of its terms and of the acceptance by the accused of the conditions imposed under section 24 of this Act.

Textual Amendments

F63 S. 28(1ZA) inserted (25.1.2018) by Criminal Justice (Scotland) Act 2016 (asp 1), s. 117(2), **sch. 2 para. 29(a)**; S.S.I. 2017/345, art. 3, sch.

F64 S. 28(1A)(1B) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 3(2)(a)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F65 Words in s. 28(2) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 3(2)(b)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F66 S. 28(3A)(3B) inserted (25.1.2018) by Criminal Justice (Scotland) Act 2016 (asp 1), s. 117(2), **sch. 2 para. 29(b)**; S.S.I. 2017/345, art. 3, sch.

F67 S. 28(4A)(4B) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 9**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

[F68 28A Application of the Criminal Justice (Scotland) Act 2016 to persons arrested and detained under section 28

(1) Section 7(2) of the Criminal Justice (Scotland) Act 2016 ("the 2016 Act") does not apply to an accused who has been arrested under section 28(1) of this Act.

(2) The following provisions of the 2016 Act apply in relation to a person who is to be brought before a court under section 28(2) or (3) of this Act as they apply in relation to a person who is to be brought before a court in accordance with section 21(2) of the 2016 Act—

(a) section 22,

(b) section 23,

(c) section 24.

(3) In relation to a person who is to be brought before a court under section 28(2) or (3) of this Act, the 2016 Act applies as though—

(a) in section 23(2)—

(i) for paragraph (c) there were substituted—

"(c) that the person is to be brought before the court under section 28 of the 1995 Act in order for the person's bail to be considered.", and

(ii) paragraph (d) were omitted,

(b) in section 24—

(i) in subsection (3)(c), for the words "after being officially accused" there were substituted " after being informed that the person is to be brought before a court under section 28(2) or (3) of the 1995 Act ", and

(ii) in subsection (4), for paragraph (c) there were substituted—

"(c) that the person is to be brought before the court under section 28 of the 1995 Act in order for the person's bail to be considered.",

(c) in section 43(1), for paragraph (d) there were substituted—

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"(d) the court before which the person is to be brought under section 28(2) or (3) of the 1995 Act and the date on which the person is to be brought before that court.".**]**

Textual Amendments

F68 S. 28A inserted (25.1.2018) by Criminal Justice (Scotland) Act 2016 (asp 1), s. 117(2), **sch. 2 para. 30**; S.S.I. 2017/345, art. 3, sch.

29 Bail: monetary conditions.

(1) Without prejudice to section 27 of this Act, where the accused or a cautioner on his behalf has deposited a sum of money in court under section 24(6) of this Act, then—

(a) if the accused fails to appear at the time and place appointed for any diet of which he has been given due notice, the court may, on the motion of the prosecutor, immediately order forfeiture of the sum deposited;

(b) if the accused fails to comply with any other condition imposed on bail, the court may, on conviction of an offence under section 27(1)(b) of this Act and on the motion of the prosecutor, order forfeiture of the sum deposited.

(2) If the court is satisfied that it is reasonable in all the circumstances to do so, it may recall an order made under subsection (1)(a) above and direct that the money forfeited shall be refunded, and any decision of the court under this subsection shall be final and not subject to review.

(3) A cautioner, who has deposited a sum of money in court under section 24(6) of this Act, shall be entitled, subject to subsection (4) below, to recover the sum deposited at any diet of the court at which the accused appears personally.

(4) Where the accused has been charged with an offence under section 27(1)(b) of this Act, nothing in subsection (3) above shall entitle a cautioner to recover the sum deposited unless and until—

(a) the charge is not proceeded with; or

(b) the accused is acquitted of the charge; or

(c) on the accused's conviction of the offence, the court has determined not to order forfeiture of the sum deposited.

(5) The references in subsections (1)(b) and (4)(c) above to conviction of an offence shall include references to the making of an order in respect of the offence under section 246(3) of this Act.

30 Bail review.

(1) This section applies where a court has refused to admit a person to bail or, where a court has so admitted a person, the person has failed to accept the conditions imposed or that a sum required to be deposited under section 24(6) of this Act has not been so deposited.

[F69(1A) This section also applies where a person who has accepted the conditions imposed on his bail wants to have any of them removed or varied.**]**

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(2) A court shall, on the application of any person mentioned in subsection (1) **[**[F70] or (1A) above, have power to review (in favour of the person) its decision as to bail, or its decision as to the conditions imposed, if—

(a) the circumstances of the person have changed materially; or

(b) the person puts before the court material information which was not available to it when its decision was made.**]**

[[F71]**[**[F72](2A) On receipt of an application under subsection (2), the court must—

(a) intimate the application to the prosecutor, and

(b) before determining the application, give the prosecutor an opportunity to be heard.

(2AA) Despite subsection (2A)(b), the court may grant the application without having heard the prosecutor if the prosecutor consents.**]**

(2B) Subsection (2C) below applies where an application is made under subsection (2) above by a person convicted on indictment pending the 5determination of—

(a) his appeal;

(b) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act; or

(c) the sentence to be imposed on, or other method of dealing with, him.

(2C) Where this subsection applies the application shall be—

(a) intimated by the person making it immediately and in writing to the Crown Agent; and

(b) **[**[F73]determined**]** not less than 7 days after the date of that intimation.**]**

(3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.

(4) Nothing in this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the conditions imposed.

Textual Amendments

F69 S. 30(1A) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 4(1)(a)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F70 Words in s. 30(02) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 4(1)(b)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F71 S. 30(2A)-(2C) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 18(3)**, 27(1); S.S.I. 2004/405, **art. 2** Sch. 1 (subject to arts. 3-5)

F72 S. 30(2A)(2AA) substituted for s. 30(2A) (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 57(2)(a)**, 206(1); S.S.I. 2011/178, art. 2, sch.

F73 Word in s. 30(2C)(b) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 57(2)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.

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31 Bail review on prosecutor's application.

(1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.

(2) On receipt of an application under subsection (1) above the court shall—

(a) intimate the application to the person granted bail;

(b) fix a diet for hearing the application and cite that person to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest that person.

[F74(2ZA) Despite subsection (2)(b), the court may grant the application without fixing a hearing if the person granted bail consents.**]**

[F75(2A) Subsection (2B) below applies to an application under subsection (1) above where the person granted bail—

(a) was convicted on indictment; and

(b) was granted bail pending the determination of—

(i) his appeal;

(ii) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act; or

(iii) the sentence to be imposed on, or other method of dealing with, him.

(2B) Where this subsection applies, the application shall be heard not more than 7 days after the day on which it is made.**]**

(3) On F76... an application under subsection (1) above the court may—

(a) withdraw the grant of bail and remand the person in question in custody; or

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

[F77(3A) In relation to an accused admitted to bail under section 65(8C) of this Act—

(a) an application may be made under subsection (1) above only in relation to the conditions imposed on bail; and

(b) paragraph (a) of subsection (3) above shall not apply in relation to any such application.**]**

(4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.

Textual Amendments

F74 S. 31(2ZA) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 57(3)(a)**, 206(1); S.S.I. 2011/178, art. 2, sch.

F75 S. 31(2A)(2B) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 18(4)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

F76 Word in s. 31(3) repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 57(3)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.

F77 S. 31(3A) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 10**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

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32 Bail appeal.

(1) **[**F78Where, in any case, bail**]** is refused or where the **[**F79accused**]** is dissatisfied with the amount of bail fixed, he may appeal to the **[**F80appropriate Appeal Court**]** which may, in its discretion order intimation to the Lord Advocate or, as the case may be, the prosecutor.

(2) Where, in any case, F81. . . bail is granted, or, in summary proceedings an accused is ordained to appear, the public prosecutor, if dissatisfied—

(a) with the decision allowing bail;

(b) with the amount of bail fixed; or

(c) in summary proceedings, that the accused has been ordained to appear,

may appeal to the **[**F82appropriate Appeal Court**]**, and the **[**F79accused**]** shall not be liberated, subject to subsection (7) below, until the appeal by the prosecutor is disposed of.

[F83(2A) The public prosecutor may, in relation to an accused admitted to bail under section 65(8C) of this Act, appeal under subsection (2) above only in relation to the conditions imposed on bail.**]**

(3) Written notice of appeal shall be immediately given to the opposite party by a party appealing under this section.

[F84(3A) A notice of appeal under this section is to be lodged with the clerk of the court from which the appeal is to be taken.

(3B) When an appeal is made under this section, that clerk shall without delay—

(a) send a copy of the notice of appeal to the judge whose decision is the subject of the appeal; and

(b) request the judge to provide a report of the reasons for that decision.

(3C) The judge shall, as soon as is reasonably practicable, provide that clerk with the judge's report of those reasons.

[F85(3CA) The clerk of the court from which the appeal is to be taken (unless that clerk is the Clerk of Justiciary) must—

(a) send the notice of appeal without delay to the clerk of the appropriate Appeal Court, and

(b) before the end of the day after the day of receipt of the notice of appeal, send the judge's report (if provided by then) to the clerk of the appropriate Appeal Court.**]**

(3F) The **[**F86clerk of the appropriate Appeal Court**]** shall, upon receipt of the notice of appeal, without delay fix a diet for the hearing of the appeal.

(3G) The **[**F87clerk of the appropriate Appeal Court**]** shall send a copy of the judge's report to—

(a) the accused or his solicitor; and

(b) the Crown Agent.

(3H) **[**F88In a case where the Sheriff Appeal Court is the appropriate Appeal Court, if**]** the judge's report is not sent as mentioned in subsection **[**F89(3CA)**]** above—

(a) the **[**F90appropriate Appeal Court**]** may call for the report to be submitted to it within such period as it may specify; or

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(b) if it thinks fit, hear and determine the appeal without the report.

(3I) Subject to subsection (3G) above, the judge's report shall be available only to the **[**F91appropriate Appeal Court**]**, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of person as may be so prescribed.**]**

(4) An appeal under this section shall be disposed of by the **[**F92appropriate Appeal Court**]** or any **[**F93judge of the appropriate Appeal Court**]** in court or in chambers after such inquiry and hearing of parties as shall seem just.

(5) Where an **[**F79accused**]** in an appeal under this section is under 21 years of age, section 51 of this Act shall apply to the **[**F94appropriate Appeal Court**]** or, as the case may be, the **[**F95judge of the appropriate Appeal Court**]** when disposing of the appeal as it applies to a court when remanding or committing a person of the **[**F79accused's**]** age for trial or sentence.

(6) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

(7) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the **[**F79accused**]** to whom bail has been granted **[**F96(other than an accused to whom subsection (7B) below applies)**]** shall, if the bail fixed has been found by him, be liberated after 72 hours from the granting of **[**F97bail**]**, whether the appeal has been disposed of or not, unless the **[**F98appropriate Appeal Court**]** grants an order for his further detention in custody.

[F99(7B) Where, in relation to an accused admitted to bail under section 65(8C) of this Act, the public prosecutor appeals against the conditions imposed on bail, the accused—

(a) may continue to be detained under the committal warrant for no more than 72 hours from the granting of bail or for such longer period as **[**F100the appropriate Appeal Court**]** may allow; and

(b) on expiry of that period, shall, whether the appeal has been disposed of or not, be released on bail subject to the conditions imposed.**]**

(8) In computing the period mentioned in subsection (7) above, Sundays and public holidays, whether general or court holidays, shall be excluded.

(9) When an appeal is taken under this section by the prosecutor in summary proceedings against the fact that the accused has been ordained to appear, subsections (7) and (8) above shall apply as they apply in the case of an appeal against the granting of bail or the amount fixed.

(10) Notice to the governor of the prison of the issue of an order such as is mentioned in subsection (7) above within the time mentioned in that subsection bearing to be sent by the **[**F101clerk of the appropriate Appeal Court**]** or the Crown Agent shall be sufficient warrant for the detention of the **[**F79accused**]** pending arrival of the order in due course of post.

[F102(11) In this section—

"appropriate Appeal Court" means—

(a) in the case of an appeal under this section against a bail decision of the High Court or a judge of the High Court, that Court,

(b) in the case of an appeal under this section against a bail decision of the Sheriff Appeal Court, the High Court,

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(c) in the case of an appeal under this section against a bail decision of a sheriff (whether in solemn or summary proceedings) or a JP court, the Sheriff Appeal Court,

"judge of the appropriate Appeal Court" means—

(a) in a case where the High Court is the appropriate Appeal Court, judge of that Court,

(b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, Appeal Sheriff,

"the clerk of the appropriate Appeal Court" means—

(a) in a case where the High Court is the appropriate Appeal Court, the Clerk of Justiciary,

(b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, the Clerk of that Court.

(12) In a case where the Sheriff Appeal Court is the appropriate Appeal Court, the references in subsections (3G)(b) and (10) to the Crown Agent are to be read as references to the prosecutor.**]**

Textual Amendments

F78 Words in s. 32(1) substituted (9.8.2000) by 2000 asp 9, **s. 4**

F79 Words in s. 32(1)(2)(5)(7)(10) substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(2)(a)**

F80 Words in s. 32(1) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(2)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F81 Words in s. 32(2) repealed (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(2)(b)**

F82 Words in s. 32(2) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(2)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F83 S. 32(2A) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 11(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

F84 S. 32(3A)-(3I) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 4(2)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F85 S. 32(3CA) substituted for s. 32(3D)(3E) (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(3)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F86 Words in s. 32(3F) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(4)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F87 Words in s. 32(3G) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(4)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F88 Words in s. 32(3H) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(5)(a)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F89 Word in s. 32(3H) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(5)(b)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F90 Words in s. 32(3H)(a) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(2)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F91 Words in s. 32(3I) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(2)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F92 Words in s. 32(4) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(2)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F93 Words in s. 32(4) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(6)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

F94 Words in s. 32(5) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(2)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

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F95 Words in s. 32(5) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(6)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)
F96 Words s. 32(7) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 11(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
F97 Words in s. 32(7) substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(2)(c)**
F98 Words in s. 32(7) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(2)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)
F99 S. 32(7B) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 11(c)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
F100 Words in s. 32(7B)(a) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(7)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)
F101 Words in s. 32(10) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(4)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)
F102 S. 32(11)(12) inserted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 122(8)**, 138(2); S.S.I. 2015/247, art. 2, sch. (with art. 7)

[F103 32A Bail after conviction: prosecutor's attitude

(1) Where—

(a) a person has been convicted in any proceedings of an offence; and

(b) a question of bail (including as to bail conditions) subsequently arises in the proceedings (whether before sentencing or pending appeal or otherwise),

the prosecutor and the convicted person must be given an opportunity to make submissions in relation to the question.

(2) But the attitude of the prosecutor towards the question does not restrict the court's exercise of its discretion in determining the question in accordance with the rules applying in the case.

(3) Despite subsection (1) above, the prosecutor need not be given an opportunity to make submissions in relation to a question of bail arising under section 245J of this Act.

(4) This section is without prejudice to any other right of the parties to be heard.**]**

Textual Amendments

F103 S. 32A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 5**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

33 Bail: no fees exigible.

No clerks fees, court fees or other fees or expenses shall be exigible from or awarded against an accused in respect of **[**F104a decision on bail under section 22A above, an**]** application for bail or of the appeal of such **[**F105a decision or**]** application to the High Court.

Textual Amendments

F104 Words in s. 33 substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(3)(a)**
F105 Words in s. 33 inserted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(3)(b)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by 2010 asp 13 Sch. 7 para. 26
- s. 13(1B)(1C) inserted by 2006 asp 10 s. 82(2)
- s. 13(2)(aa) inserted by 2006 asp 10 s. 82(3)(b)
- s. 13(3A) inserted by 2006 asp 10 s. 82(4)
- s. 13(5)(ba) inserted by 2006 asp 10 s. 82(5)(a)
- s. 13(6)(a)(iii) and word inserted by 2006 asp 10 s. 82(6)(b)
- s. 13(8) inserted by 2006 asp 10 s. 82(7)
- s. 22(5A) inserted by 2007 asp 6 s. 7(2)(g)
- s. 22A(1A) inserted by 2023 asp 4 s. 1(2)
- s. 23B(1)(1A) substituted for s. 23B(1) by 2023 asp 4 s. 2(2)(a)
- s. 23B(6A) inserted by 2023 asp 4 s. 1(3)(c)
- s. 23B(8)-(10) inserted by 2023 asp 4 s. 2(2)(c)
- s. 23C(1A) inserted by 2023 asp 4 s. 2(3)(b)
- s. 23C(3) inserted by 2023 asp 4 s. 2(3)(c)
- s. 24(2C) inserted by 2023 asp 4 s. 4(4)
- s. 24(2AA) inserted by 2023 asp 4 s. 4(2)
- s. 73A inserted by 2004 asp 3 s. 2(3)
- s. 167(7D)(7E) inserted by 2007 asp 17 sch. 4 para. 1(3)
- s. 167(7D) words substituted by 2010 asp 13 Sch. 3 para. 16(2)
- s. 167(7E) words substituted by 2010 asp 13 Sch. 3 para. 16(3)
- s. 194ZA repealed by 2014 asp 18 sch. 3 para. 25
- s. 200A inserted by 2016 asp 1 s. 85
- s. 205A added by 1997 c. 48 s. 1(1) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by 2023 asp 4 s. 5
- s. 249(4A)-(4D) inserted by 2014 asp 1 s. 24
- s. 271D(4A) inserted by 2019 asp 8 s. 6(4)
- s. 271F(2)(aa) inserted by 2019 asp 8 s. 10(4)
- s. 271AA inserted by 2019 asp 8 s. 6(2)
- s. 271BZD inserted by 2019 asp 8 s. 3(2)
- s. 288AB288AC inserted by 2024 asp 1 s. 32(3)
- Sch. 5A added by 1997 c. 48 s. 1(2) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)