

## Briefing for the Citizen Participation and Public Petitions Committee

Petition [PE1882](#): Remand anyone charged with a sexual offence against a child, lodged by Laura Steel

### Current law on bail and remand

Whilst waiting for trial, an accused person may be allowed to remain in the community subject to bail conditions or held in custody on remand. The decision is taken by the court (most commonly by a sheriff).

In summary procedure cases, an accused may also be allowed to remain in the community pending trial without the conditions involved in bail. Summary procedure is used in less serious cases, with solemn procedure in more serious ones.

Part III of the [Criminal Procedure \(Scotland\) Act 1995](#) contains relevant provisions on bail and remand, including ones providing that:

- during the first court appearance, the court will decide whether to release an accused on bail or remand them in custody
- the accused (or defence lawyer) and prosecution are entitled to address the court on the issue of bail
- in most cases, bail should be granted unless there is a good reason for refusing it (e.g. a substantial risk that the accused will commit further offences or fail to appear when due back in court if released)
- in some cases, bail should only be granted in exceptional circumstances – including cases where the accused is being prosecuted under solemn procedure for a sexual offence and has a previous conviction under solemn procedure for a sexual offence (or certain other offences)

- both the accused and prosecution have rights of appeal in relation to decisions on granting bail.

The current provisions of the Criminal Procedure (Scotland) Act 1995 reflect changes made by subsequent statutes, including the:

- Criminal Proceeding etc. (Reform) (Scotland) Act 2007 – e.g. inserting the above restrictions on granting bail where the accused is being prosecuted under solemn procedure for a sexual offence
- Bail, Judicial Appointments etc. (Scotland) Act 2000 – e.g. repealing tighter restrictions on the granting of bail where a person is charged with murder or treason.

The changes made on bail in cases of murder and treason sought to ensure compliance with article 5 of the European Convention on Human Rights relating to the right to liberty.

The bail restrictions in sexual offence cases, as inserted by the Criminal Proceeding etc. (Reform) (Scotland) Act 2007, are discussed further below – in relation to the work of the former Justice 2 Sub-Committee. Its work included consideration of whether there should be additional provisions restricting bail where a person is charged with a sexual offence against a child.

## Court statistics

The Scottish Government statistical bulletin [Criminal Proceedings in Scotland, 2019-20](#) (published May 2021) includes the following 2019-20 figures for cases where a sexual crime was the main charge:

- 1,700 people were proceeded against, with a charge proved in 71% of cases (tables 2(a) and (b))
- 1,160 bail orders were made (table 14)
- 35% of people convicted received a custodial sentence (table 9(b)).

The category ‘sexual crimes’ is used in the statistical bulletin to cover:

- rape and attempted rape
- sexual assault

- crimes associated with prostitution
- other sexual crimes (e.g. indecent image offences and sexual exposure).

Sexual offences against children fall within more than one of these sub-categories.

## Justice 2 Sub-Committee inquiry on child-sex offenders

In 2006, a sub-committee of the Justice 2 Committee was established to carry out an [inquiry on child-sex offenders](#). The [Sub-Committee report on the inquiry](#) was published in December 2006. In relation to the issue of bail, it included the following:

“The Criminal Proceedings etc. (Reform) (Scotland) Bill, currently before the Parliament confirms the general entitlement to bail but also sets out particular serious types of cases in relation to which bail is to be granted only in exceptional circumstances. These include cases where someone is on a charge, to be heard in a solemn (jury) court, with violent or sexual crimes (excluding prostitution) and who have previous convictions in such a court for sexual crimes.” (para 157)

“The Sub-Committee believes that, under the proposals in the Criminal Proceedings etc. (Reform) (Scotland) Bill, sexual crimes against children would be caught by the exceptional circumstances provisions and would, therefore, be unlikely to be bailable. However, for clarity, the Sub-Committee recommends that the Scottish Executive makes explicit in the Bill that those charged with sexual offences against children will only be granted bail in exceptional circumstances.” (recommendation 30)

At the point the inquiry report was published, stage 2 scrutiny of the Criminal Proceedings etc. (Reform) (Scotland) Bill had been completed. The Bill was passed in January 2007.

What subsequently became the [Criminal Proceeding etc. \(Reform\) \(Scotland\) Act 2007](#) inserted various provisions into the Criminal Procedure (Scotland) Act 1995. These included the current restriction on granting bail where the accused is being prosecuted under solemn procedure for a sexual offence and has a previous conviction under solemn procedure for a sexual offence. However,

it did not add specific bail provisions in relation to child-sex offences as suggested in recommendation 30 of the Sub-Committee's report.

The Justice 2 Committee sought a written response from the Scottish Executive on the Sub-Committee's report. This was provided and considered at the [Committee's meeting on 6 March 2007](#) (papers include the response). In relation to recommendation 30 of the Sub-Committee's report, the written response said:

"The Committee is correct in its assertion that, under the provisions contained in the Criminal Proceedings etc. (Reform) (Scotland) Bill, where an individual is charged under solemn procedure with a sexual offence against a child and that individual has a previous solemn conviction for a violent or sexual offence, bail will only be granted by the court in exceptional circumstances.

The Criminal Proceedings etc. (Reform) (Scotland) Bill was passed unanimously by Parliament on 18 January 2007. The recommendation would, therefore, require to be considered further, especially in terms of its compatibility with ECHR."

The recommendation was also raised in questioning of the then Minister for Justice (Cathy Jamieson) at the meeting:

"Mr MacAskill: The Sub-Committee recommended that people charged with sexual offences against children be granted bail only in exceptional circumstances. Why does the Criminal Proceedings etc. Reform (Scotland) Act 2007 apply that restriction only to individuals who have a previous solemn conviction for a sexual or violent offence?

Cathy Jamieson: During the passage of the Bill there was considerable discussion of bail. Ultimately, it is for the courts to decide who is bailable in particular circumstances. I know that the Committee has expressed concerns about the issue, but there was some uncertainty about what the Sub-Committee was getting at in its recommendation. Did it intend that everyone who is charged with a sexual offence against a child at either summary or solemn level should be granted bail only in exceptional circumstances, and that that test should apply regardless of whether the accused has previous convictions? Or was the recommendation that the exceptional circumstances

test should be extended to summary procedure and should apply to those with analogous summary convictions?

It is not in doubt that, as stated in our response to the sub-committee, the exceptional circumstances provisions in the Criminal Proceedings etc. Reform (Scotland) Act 2007 will apply in the most serious child sex offence cases, where an accused has been charged with a child sex offence under solemn procedure and has previous solemn convictions for child sex offences. Those are the serious circumstances that concern us.” (Official Report, col 3260)

## Justice Committee inquiry into the use of remand

During the last parliamentary session, the Justice Committee held an [inquiry into the use of remand](#). The [inquiry report](#) was published in June 2018. The inquiry was held in response to concerns that too many people are remanded in custody and about the impact which remand can have on them and their families. It did not have a focus on the use of bail and remand in relation to particular types of offence.

## Other reports relating to the prosecution of sex offences

Various aspects of the prosecution of sex offences are considered in other reports. These include:

- HM Inspectorate of Prosecution in Scotland reports on the investigation and prosecution of sexual offences – [2017 report](#) and [2020 follow-up report](#)
- Lord Justice Clerk’s Review Group – [2021 report on improving the management of sexual offences cases](#)

### Key organisations

- [Crown Office and Procurator Fiscal Service](#)
- [Faculty of Advocates](#)
- [Law Society of Scotland](#)
- [Scottish Government](#)
- [Senators of the College of Justice](#)
- [Sheriffs’ Association](#)

- [Victim Support Scotland](#)

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