

This document has been prepared as a “Keeling schedule” to set out the amendments to be made to Part 3 of the Criminal Procedure (Scotland) Act 1995 by Part 1 (bail) of the Bail and Release from Custody (Scotland) Bill (“the Bill”). It is provided to assist in the Stage 1 scrutiny of the Bill. Although every effort has been made to ensure the accuracy of the information, it is for illustrative purposes only. For instance, not all the provisions of Part 3 of the 1995 Act are included. Only provisions being amended, or which are necessary to understand those provisions or the amendments to them, are included.

Amendments proposed by the Bill are shown in blue.

Criminal Procedure (Scotland) Act 1995 (as prospectively amended)

PART 3

BAIL

...

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, either admit or refuse to admit that person to bail.

- (1A) Before determining whether to admit or refuse to admit the person accused or charged to bail, the sheriff or judge must also give an officer of a local authority an opportunity to provide (orally or in writing) information relevant to that determination.
- (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 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.

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23B Entitlement to bail and the court's function

- (1) Bail is to be granted to an accused person unless the court determines that there is good reason for refusing bail.
- (1A) The court may determine that there is good reason for refusing bail only if it considers that—
 - (a) at least one of the grounds specified in section 23C(1) applies, and

- (b) having regard to the public interest, and having considered the imposition of bail conditions in accordance with subsection (2), it is necessary to refuse bail—
 - (i) in the interests of public safety, including the safety of the complainer from harm, or
 - (ii) to prevent a significant risk of prejudice to the interests of justice.
- (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) [repealed]
- (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 (including submissions in relation to any information provided by an officer of a local authority under section 22A(1A) or in response to a request under subsection (6)).
- (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.
- (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 or an officer of a local authority to provide it with information relevant to the question.
- (7) However, whether that party or officer gives the court opinion as to any risk of something occurring (or any likelihood of something not occurring) is a matter for that party or officer to decide.
- (8) For the purposes of subsection (1A)(b)(i)—
 - “complainer” means the person against whom the offence to which the proceedings relate is alleged to have been committed,
 - “harm” means physical or psychological harm,
 - “psychological harm” includes fear, alarm and distress.
- (9) For the purposes of subsection (1A)(b)(ii), “prejudice to the interests of justice” means—
 - (a) the accused person evading justice as a result of the proceedings being delayed or discontinued, or
 - (b) the course of justice in the proceedings being impeded or prejudiced as a result of—
 - (i) the destruction, concealment or withholding of evidence,
 - (ii) the giving of false or misleading evidence, or
 - (iii) the quality of evidence, or its sufficiency in law, being diminished.
- (10) In subsection (9)(b)(iii), the reference to the quality of evidence is to its quality in terms of completeness, accuracy and probative value.

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) [subject to subsection \(1A\)](#), 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.
- (1A) [When determining whether there is good reason for refusing bail in summary proceedings, the court may take account of any such risk as is mentioned in subsection \(1\)\(a\) only where—](#)
 - (a) [the person has previously failed to appear at a relevant diet, or](#)
 - (b) [the proceedings relate to an offence under section 27\(1\)\(a\) or 150\(8\).](#)
- (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 by courts outside Scotland);
 - (ii) whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise);
 - (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.
- (3) In subsection (1A)(a), “relevant diet” means a diet of the court relating to the offence with which the person is charged—
 - (a) of which the person has been given due notice, or
 - (b) at which the person is required by this Act to appear.

23D Restriction on bail in certain solemn cases

[Repealed]

24 Bail and bail conditions.

- (1) All crimes and offences 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.
- (2A) Whenever the court grants or refuses bail, it shall state its reasons.
- (2AA) Where the court refuses bail in any proceedings in which a person is accused of an offence, it must—
 - (a) state in particular—
 - (i) the grounds on which it determines, in accordance with section 23B(1A), that there is good reason for refusing bail,
 - (ii) if refusing bail solely on the ground specified in section 23C(1)(a) (substantial risk of absconding or failing to appear), its reasons for considering under section 23B(1A)(b) that it is necessary to do so, and
 - (iii) its reasons for considering under section 23B(1A)(b) and (2) that either it would not be appropriate to impose on the accused bail conditions subject to a requirement to submit to monitoring in accordance with Part 1 of the Management of Offenders (Scotland) Act 2019 (electronic monitoring) or that doing so would not adequately safeguard the interests of public safety or justice as mentioned in section 23B(1A)(b)(i) or (ii), and
 - (b) have those grounds and reasons entered in the record of the proceedings.
- (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;

- (b) liberation may be granted by the police under section 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;
 - (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 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;
 - (ca) does not behave in a manner which causes, or is likely to cause, alarm or distress to witnesses;
 - (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; and
 - (e) where the (or an) offence in respect of which he is admitted to bail is one listed 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.
- (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.

(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 (other than subsection (2AA)) 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.