

# Bail and Release from Custody (Scotland) Bill

[AS AMENDED AT STAGE 2]

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# Bail and Release from Custody (Scotland) Bill

## [AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the determination of questions of bail; to provide for the court, when sentencing, to have regard to time spent on certain bail conditions; to ensure prisoners are not released on Fridays and certain other days; to provide for the temporary release of long-term prisoners; to enable certain prisoners to be released early in emergency situations; to require certain public bodies to engage in planning for the release of prisoners; to provide support for released prisoners; to provide for information about prisoners to be given to persons or bodies supporting victims; and for connected purposes.

### PART 1

#### BAIL

#### **1 Decisions on bail: relevant information from officer of local authority**

- (1) The Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) is amended as follows.
- (2) In section 22A (consideration of bail on first appearance), after subsection (1) insert—
  - “(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.”.
- (3) In section 23B (entitlement to bail and the court’s function)—
  - (a) at the end of subsection (4) insert “(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))”,
  - (b) in subsection (6), after “counsel” insert “or an officer of a local authority”,
  - (c) in subsection (7), after “party” in each place where it occurs insert “or officer”.
- (4) The Social Work (Scotland) Act 1968 is amended as follows.
- (5) In section 27 (supervision and care of persons put on probation or released from prisons etc.), in subsection (1), before paragraph (a) insert—
  - “(za) making available to any court, in accordance with section 22A(1A) or 23B(6) of the Criminal Procedure (Scotland) Act 1995, such information as may be relevant to the court’s determination of whether to grant bail to persons who are accused of or charged with an offence;”.

**2 Determination of good reason for refusing bail**

- (1) The 1995 Act is amended as follows.
- (2) In section 23B (entitlement to bail and the court’s function)—
- (a) for subsection (1) substitute—
- 5 “(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
- 10 (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
- 15 (ii) to prevent a significant risk of prejudice to the interests of justice.”,
- (b) subsection (3) is repealed,
- (c) after subsection (7) insert—
- “**(8)** For the purposes of subsection (1A)(b)(i)—
- 20 “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—
- 25 (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,
- 30 (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.”.
- (3) In section 23C (grounds relevant as to question of bail)—
- 35 (a) in subsection (1), at the beginning of paragraph (a) insert “subject to subsection (1A),”,
- (b) after subsection (1) insert—

“(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).”,

(c) after subsection (2) insert—

“(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.”.

### **3 Removal of restriction on bail in certain solemn cases**

Section 23D of the 1995 Act (restriction on bail in certain solemn cases) is repealed.

### **4 Refusal of bail: duty to state and record reasons**

(1) Section 24 of the 1995 Act (bail and bail conditions) is amended as follows.

(2) After subsection (2A) insert—

“(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 the grounds mentioned in paragraph (a)(i) entered in the record of the proceedings.”.

(2A) In subsection (2B)(a), for the words from “a sexual offence” to “Act)” substitute “an offence falling within subsection (2C)”.

(2B) After subsection (2B) insert—

“(2C) An offence falls within this subsection if it is—

(a) a sexual offence (having the meaning given by section 210A(10) and (11)),

- (b) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
- (c) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
- (d) an offence under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (offence of stalking),
- (e) an attempt, conspiracy or incitement to commit an offence mentioned in paragraph (b), (c) or (d),
- (f) aiding, abetting, counselling or procuring the commission of an offence mentioned in paragraph (b), (c) or (d)."

(3) In subsection (8), after “this section” insert “(other than subsection (2AA))”.

## 5 Time spent on electronically monitored bail

After section 210 of the 1995 Act (consideration of time spent in custody) insert—

### “210ZA Consideration of time spent on electronically monitored bail

- (1) This section applies where—
  - (a) a court passes a sentence of imprisonment or detention on a person for an offence, and
  - (b) the person has spent a period of time (“the bail period”) on qualifying bail awaiting trial or sentence.
- (2) When passing the sentence, the court must—
  - (a) have regard to the bail period,
  - (b) specify, in accordance with subsection (3), a period of time (“the relevant period”) which is to be treated as a period of time spent in custody by the person, and
  - (c) unless the relevant period is nil, direct (for the purpose of executing the sentence) that the person is to be treated as having served either—
    - (i) the sentence in full, where the relevant period is equal to or greater than the sentence passed, or
    - (ii) such part of the sentence as is equal to the relevant period, where the relevant period is less than the sentence passed.
- (3) The relevant period is to be the period equal to one-half of either of the following (rounded up, as necessary, to the nearest whole day)—
  - (a) the bail period, or
  - (b) the bail period less such period (whether all or part of the bail period) as the court considers appropriate to disregard.
- (4) Where the court specifies the relevant period in accordance with subsection (3)(b), it must state its reasons for disregarding all or (as the case may be) part of the bail period.
- (5) Nothing in this section affects the application of section 210 to any period of time which the person may additionally have spent in custody or in hospital as described in that section.

- (6) For the purposes of this section—
- (a) “qualifying bail” means bail subject to a condition—
    - (i) which requires the person to remain at one or more specified places for a total period (whether or not continuous) of not less than 9 hours in any given day, and
    - (ii) in relation to which the person is required to submit to monitoring in accordance with Part 1 of the Management of Offenders (Scotland) Act 2019 (electronic monitoring etc.),
  - (b) references to the bail period are references to the period beginning on the day on which the person is granted qualifying bail and ending on the day before the day on which the person ceases to be on qualifying bail.
- (7) The Scottish Ministers may by regulations—
- (a) modify—
    - (i) the meaning of “qualifying bail” or “the bail period” given by subsection (6),
    - (ii) the meaning of “the relevant period” given by subsection (3),
  - (b) further modify this section, or modify any other enactment, to make such further provision for the purposes of this section as the Scottish Ministers consider appropriate.
- (8) Regulations under subsection (7)—
- (a) may include incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) are subject to the affirmative procedure.”.

## **5A Report on bail and remand**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the reporting period, prepare and publish a report on bail and remand.
- (2) The report must include the following information for each year of the reporting period—
  - (a) the average daily remand population,
  - (b) the total number of individuals within the remand population,
  - (c) the number of individuals who entered the remand population by reference to each of the following characteristics—
    - (i) the offence (or type of offence) in respect of which the individual was remanded in custody,
    - (ii) the individual’s gender,
    - (iii) the local authority area in which the individual lived immediately before being remanded in custody,
  - (d) an analysis of the length of time that individuals spent within the remand population,

- (e) the number of bail orders made by reference to the offence (or type of offence) in respect of which the individual was granted bail,
- (f) the number of convictions for—
  - (i) bail-related offences, and
  - (ii) other offences (“subsequent offences”) committed while on bail by reference to the subsequent offence (or type of subsequent offence) in respect of which the individual was convicted.

(3) The report may—

- (a) include any other information that the Scottish Ministers consider appropriate, and
- (b) be in any form that they consider appropriate and, in particular, may be part of another document.

(4) In this section—

“bail-related offence” means an offence under section 27(1)(a) or (b) or (7) of the 1995 Act,

“remand population” means the Scottish prison population comprising—

- (a) every individual who was accused of, or charged with, an offence and remanded in custody while awaiting trial, and
- (b) every individual who was convicted of an offence and remanded in custody while awaiting sentence,

“reporting period” means the period of 3 years beginning with the day on which section 2 comes into force.

## PART 2

### RELEASE FROM CUSTODY

#### **6 Prisoners not to be released on certain days of the week**

(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) is amended as follows.

(2) In section 27 (interpretation of Part 1)—

(a) in subsection (7), for the words from “a Saturday”, in the first place where they occur, to the end substitute “—

- (a) an excepted day, or
- (b) subject to subsection (7A), a Thursday,

the release of the prisoner is to be brought forward to the last preceding day which is a suitable release day.”,

(b) after subsection (7) insert—

“(7A) Subsection (7)(b) does not apply where the prisoner fell to be released on or by an excepted day and the release was brought forward to a Thursday by virtue of subsection (7)(a).



(7B) For the purposes of subsections (7) and (7A)—

(a) an “excepted day” is a day which is—

- (i) a Friday,
- (ii) a Saturday,
- (iii) a Sunday,
- (iv) a public holiday,
- (v) the day before a public holiday,

(b) a “suitable release day” is a day which is not—

- (i) in a case where subsection (7)(a) applies, an excepted day,
- (ii) in a case where subsection (7)(b) applies, an excepted day or a Thursday.”.

## **7 Release on licence of long-term prisoners**

(1) The 1993 Act is amended as follows.

(2) In section 1A (application to certain persons serving more than one sentence), in subsection (1)(c), after “3AA” insert “or 3AB”.

(3) In section 1B (prisoners serving consecutive sentences including at least one terrorism sentence), in subsection (11), after “3AA” insert “or 3AB”.

(4) In section 3AA (further powers to release prisoners)—

(a) subsection (1)(b) and “or” immediately preceding it are repealed,

(aa) subsection (7) is repealed,

(b) in the section title, after “release” insert “short-term”.

(5) After that section insert—

### **“3AB Further powers to release long-term prisoners**

(1) The Scottish Ministers may release on licence under this section a long-term prisoner whose release under section 1 has not been recommended by the Parole Board.

(2) Before releasing a long-term prisoner by virtue of subsection (1), the Scottish Ministers must consult the Parole Board.

(3) If directed to do so by the Parole Board, the Scottish Ministers must release on licence under this section a long-term prisoner whose release on having served one half of the prisoner’s sentence has been recommended by the Board.

(4) In deciding whether to release a long-term prisoner by virtue of subsection (1) or direct the release of a prisoner by virtue of subsection (3), the Scottish Ministers or, as the case may be, the Parole Board must have regard to considerations of—

(a) protecting the public at large,

(b) preventing re-offending by the prisoner, and

(c) securing the successful re-integration of the prisoner into the community.

- (5) A long-term prisoner may not be released on licence under this section before the beginning of the period of 180 days ending with the day on which the prisoner will have served one half of the prisoner’s sentence.
- (6) The period for which a long-term prisoner is to be released on licence under this section (the “release period”)—
- (a) may not exceed 180 days on any one occasion,
- (b) is to be specified—
- (i) where subsection (1) applies, by the Scottish Ministers,
- (ii) where subsection (3) applies, by the Parole Board.
- (7) Subject to subsection (6)(a), the Scottish Ministers or, as the case may be, the Parole Board may extend the release period specified by virtue of subsection (6)(b)(i) or, as the case may be, (ii).
- (8) For the avoidance of doubt, nothing in this section requires the Scottish Ministers or the Parole Board to make a decision by a particular date about whether to release or, as the case may be, direct the release of a prisoner on licence under this section.
- (9) Subsection (1) does not apply where—
- (a) the prisoner's sentence was imposed under section 210A of the 1995 Act,
- (b) the prisoner is subject to a hospital direction imposed under section 59A of that Act or a transfer for treatment direction made under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003,
- (c) the prisoner is liable to removal from the United Kingdom (within the meaning of section 9 of this Act).
- (10) This section does not apply where the long-term prisoner is a person in relation to whom section 1AB applies.

**3AC Further powers to release long-term prisoners: supplementary**

- (1) The Scottish Ministers may by regulations do any or all of the following—
- (a) amend the number of days for the time being specified in section 3AB(5),
- (b) amend the number of days for the time being specified in section 3AB(6)(a),
- (c) amend any paragraph of section 3AB(9), add a further paragraph to that subsection or repeal any of its paragraphs.
- (2) Regulations under subsection (1)—
- (a) may include incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) are subject to the affirmative procedure.”.
- (6) In section 11 (duration of licence)—
- (a) in subsection (3A), after “3AA” insert “or 3AB”,
- (b) after subsection (3B) insert—

“(3C) A licence granted under section 3AB remains in force (unless revoked)—

(a) in the case of a person released by virtue of section 3AB(1), until whichever comes first—

5 (i) the date on which the release period specified by virtue of section 3AB(6)(b)(i) comes to an end,

(ii) where the Parole Board decides not to recommend the person’s release on licence, the date of that decision,

10 (iii) where the Parole Board decides to recommend the person’s release on licence or the person otherwise falls to be released by virtue of section 1, the date on which the person would, but for their release under section 3AB(1), fall to be released on licence under section 1,

15 (b) in the case of a person released by virtue of section 3AB(3), until the date on which the person would, but for their release under section 3AB(3), fall to be released on licence under section 1.

(3D) On a licence under section 3AB ceasing to have effect as mentioned in subsection (3C)(a)(i) or (ii), the released person is liable to be detained in pursuance of the person’s sentence and, if at large, is deemed to be unlawfully at large.”

20 (7) In section 12 (conditions in licence), in subsection (4A)—

(a) for “3AA” substitute “3AB(1)”,

(b) for “for the purposes of section 1(3) of this Act” substitute “by virtue of section 3AB(2)”.

25 (8) In section 12AA (conditions for persons released on licence under section 3AA)—

(a) in subsection (1), for “of this Act,” to the end substitute “—

(a) any licence granted under section 3AA or 3AB(1) must include—

(i) the standard conditions, and

(ii) a curfew condition complying with section 12AB,

30 (b) any licence granted under section 3AB(3) must include such a curfew condition.”,

(b) in subsection (5), after “prescribed” insert “—

(a) for licences granted under section 3AA and for licences granted under section 3AB(1),

(b)”

35 (c) in subsection (6)(a), after “above” insert “in relation to licences granted under section 3AA”,

(d) after subsection (6) insert—

“(7) Subsection (4) of section 3AB applies in relation to—

40 (a) the exercise of the power of prescription conferred by subsection (3) in relation to licences granted under section 3AB(1),

(b) the specification, variation or cancellation of conditions, other than the standard conditions, in a licence granted under section 3AB,

as it applies in relation to the exercise of the power conferred by subsection (1) or, as the case may be, (3) of that section.”,

5 (e) in the section title, after “3AA” insert “or 3AB”.

(9) In section 12B (certain licences to be replaced by one), in subsection (4), after “3AA” insert “or 3AB”.

(10) In section 17 (revocation of licence), in subsection (7), after “3AA” insert “or 3AB(1)”.

(11) In section 17A (recall of prisoners released under section 3AA)—

10 (a) in subsection (1), after “3AA” insert “or 3AB(1)”,

(b) in subsection (5B), after “3AA” insert “or, as the case may be, 3AB(1)”,

(c) in the section title, after “3AA” insert “or 3AB(1)”.

(12) In section 21A (operating protocol for release on licence under section 3AA)—

(a) in subsection (1), after “3AA” in each place it occurs insert “or 3AB”,

15 (b) in the section title, after “3AA” insert “or 3AB”.

(13) In section 32A of the Prisons (Scotland) Act 1989 (offence where person unlawfully at large), in subsection (1)(a), after “section” insert “11(3D)”.

(14) In section 7 of the Management of Offenders (Scotland) Act 2019 (list of relevant conditions which may be monitored electronically), in subsection (1)(a)—

20 (a) for “12AA(1)(b)” substitute “12AA(1)”,

(b) after “3AA” insert “or 3AB”.

## **7A Review of recommendations and directions by Parole Board**

(1) The 1993 Act is amended as follows.

(2) In section 17 (revocation of licence), after subsection (2) insert—

25 “(2A) Subsection (2B) applies where the Scottish Ministers, having released a long-term prisoner on licence under section 3AB(3), revoke the licence and recall the prisoner to prison under subsection (1) or revoke the licence under subsection (1A).

30 (2B) The Parole Board may, whether when considering the prisoner’s case on a referral under subsection (3) or otherwise, review its recommendation that the prisoner be released on licence on having served one half of the prisoner’s sentence.”.

(3) In section 17A (recall of prisoners released under section 3AA or 3AB(1))—

(a) after subsection (2A) insert—

35 “(2B) Subsection (2C) applies where—

(a) the Scottish Ministers release a long-term prisoner on licence under section 3AB(1),

(b) the Parole Board subsequently recommends that the prisoner be released on licence on having served one half of the prisoner’s sentence, and

(c) the Scottish Ministers revoke the licence under section 3AB(1) and recall the prisoner to prison under subsection (1).

(2C) The Parole Board may, whether or not the case is referred to it under subsection (3), review its recommendation that the prisoner be released on licence on having served one half of the prisoner’s sentence.”,

(b) in subsection (3), for “such representations” substitute “representations under subsection (2)”.

(4) After section 17A insert—

**“17B Review by Parole Board of decision to recommend or direct release on licence**

(1) This section applies where—

(a) the Parole Board recommends or directs that a prisoner be released on licence under this Part, and

(b) the prisoner has not yet been released on licence as a result of the Board’s recommendation or, as the case may be, direction.

(2) The Parole Board may, if subsection (3) applies, review its recommendation or, as the case may be, direction that the prisoner be released on licence.

(3) This subsection applies if information comes to the Parole Board’s attention—

(a) that was not available to the Board when it made its recommendation or, as the case may be, direction, and

(b) which, in the opinion of Board, has a significant bearing on the prisoner’s suitability for release on licence.”.

**8 Power to release early**

(1) The 1993 Act is amended as follows.

(2) After section 3B (review of decisions as to determinate sentences) insert—

**“3C Power to release early**

(1) The Scottish Ministers may by regulations provide that a person of a description specified in the regulations is to be released from prison early on a date that is—

(a) either—

(i) specified in the regulations, or

(ii) determined in accordance with provision made in the regulations, and

(b) not later than the regulations’ latest release date.

(2) The Scottish Ministers may make regulations under this section only if they are satisfied that making the regulations is necessary and proportionate, in response to the effects an emergency situation is having or is likely to have on a prison or prisons generally, for the purpose of protecting—

(a) the security and good order of any prison to which the regulations would relate, or

(b) the health, safety or welfare of prisoners, or those working, in any such prison.

(3) Regulations under this section may—

(a) provide that long term prisoners released by virtue of those regulations are released on licence,

(b) specify standard conditions which must be included in any licence granted by virtue of paragraph (a).

(3A) A person is not to be released from prison by virtue of regulations under this section more than 180 days earlier than the Scottish Ministers would otherwise be required to release the person.

(4) A person is not to be released from prison by virtue of regulations under this section if—

(a) the person falls within subsection (5), or

(b) the governor of the prison within which the person is detained considers that the person would, if released, pose an immediate risk of harm—

(i) to an identified person, or

(ii) to an identified group of people.

(5) A person falls within this subsection if the person is—

(a) a life prisoner,

(b) an untried prisoner,

(c) a terrorist prisoner within the meaning of section 1AB,

(d) due to serve a terrorism sentence within the meaning of section 1B but, by virtue of that section, is not yet serving it,

(e) liable to removal from the United Kingdom for the purposes of section 9,

(f) subject to a supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995,

(g) serving a sentence passed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),

(h) the subject of proceedings under the Extradition Act 2003,

(i) subject to the notification requirements of Part 2 of the Sexual Offences Act 2003,

(j) serving a sentence of imprisonment or detention for an offence—

(i) that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,

(ii) under section 1(1) of the Domestic Abuse (Scotland) Act 2018,

(iii) under section 7(1) or 17(1) of the Domestic Abuse (Protection) (Scotland) Act 2021,

(k) a long-term prisoner, unless that prisoner has been recommended for release by the Parole Board at the date on which the regulations are made.

(6) Regulations under this section may make different provision for different purposes.

(7) In this section—

“emergency situation” means—

- 5 (a) the incidence or spread of infection, contamination or the source of contamination which presents or could present significant harm to human health in Scotland (whether from risks originating there or elsewhere),
- 10 (b) an event or situation which has resulted in any prison (or part of a prison) to which the regulations would relate being unusable,
- (c) any other event or situation which is reasonably considered by the Scottish Ministers to place at significant risk—
- 15 (i) the security and good order of a prison or prisons generally,
- (ii) the health, safety, and welfare of prisoners, or those working, in any such prison,

“governor” in relation to a prison, means—

- 20 (a) the governor appointed for the prison under section 3(1A) of the Prisons (Scotland) Act 1989, or
- (b) in the case of a contracted out prison, the director appointed for the prison under section 107(1)(a) of the Criminal Justice and Public Order Act 1994,

“latest release date” means a date specified in the regulations in question, which must be a date within the period of 180 days beginning with the day that the regulations are made,

25 “untried prisoner” means a person who, whether or not in prison for any other reason, is in prison—

- (a) having been committed for examination or trial on a criminal charge,
- 30 (b) by virtue of remand in custody under the Extradition Act 2003,
- (c) by virtue of detention under Schedule 2 or 3 of the Immigration Act 1971, or
- (d) following conviction and awaiting sentence.

### **3D Parliamentary scrutiny of regulations made under section 3C**

35 (1) Regulations under section 3C are subject to the affirmative procedure, unless subsection (2) applies to them.

(2) This subsection applies to regulations if the Scottish statutory instrument containing the regulations includes a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure.

- (3) Where subsection (2) applies to regulations—
- (a) section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply to the regulations,
  - (b) the Scottish statutory instrument containing the regulations must be laid before the Scottish Parliament as soon as practicable after they are made,
  - (c) the Scottish Ministers must explain why they are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure, and
  - (d) the regulations cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the Scottish statutory instrument containing them is approved by resolution of the Parliament.
- (4) In calculating the period of 28 days mentioned in subsection (3)(d), no account is to be taken of any time during which the Scottish Parliament is—
- (a) in recess for more than 4 days, or
  - (b) dissolved.
- (5) Regulations ceasing to have effect by virtue of subsection (3)(d) neither—
- (a) affects anything done under the regulations before they ceased to have effect, nor
  - (b) prevents new regulations being made under section 3C.

**3E Effect of early release from prison or young offenders institution by virtue of regulations**

- (1) A person described in the first column of the table below who is released from custody by virtue of regulations under section 3C is deemed to have been released by virtue of the provision of this Act mentioned in the corresponding entry in the second column.

<i>Status of person immediately before release</i>	<i>Provision of this Act by virtue of which the person is deemed to have been released</i>
A short-term prisoner	section 1(1)
A long-term prisoner	section 1(3)
A person serving a term of imprisonment or detention imposed on a basis mentioned in section 5(1)(a) or (b) (fine defaulters and persons in contempt of court) and who is, for any purpose, to be treated as a short-term prisoner by virtue of that section	section 1(1), construed as required by section 5(2)
A person serving a term of imprisonment or detention imposed on a basis mentioned in section 5(1)(a) or (b) and who is, for any purpose, to be	section 1(3), construed as required by section 5(2)



<i>Status of person immediately before release</i>	<i>Provision of this Act by virtue of which the person is deemed to have been released</i>
----------------------------------------------------	--------------------------------------------------------------------------------------------

5 treated as a long-term prisoner by virtue of that section

- |                                                                                                                         |              |
|-------------------------------------------------------------------------------------------------------------------------|--------------|
| (a) A person detained—                                                                                                  | section 7(2) |
| (i) under section 208 of the Criminal Procedure (Scotland) Act 1995 (detention of children convicted on indictment), or |              |
| (ii) in pursuance of an order under section 7(3) (children detained in solemn proceedings)                              |              |

15 (2) In this section, “short-term prisoner” and “long-term prisoner” include a person treated, for any purpose, as a short-term prisoner or (as the case may be) a long term prisoner by virtue of section 6(1)(a) or 16(5)(a).”.

(3) In section 12 (conditions in licence), after subsection (3) insert—

20 “(3A) Subsection (3)(b) does not apply in relation to a standard condition in a licence granted by virtue of regulations under section 3C(3).”.

(4) After that section insert—

**“12ZA Conditions for persons released on licence under section 3C(3)**

25 (1) Standard conditions specified by the Scottish Ministers in regulations under section 3C(3) remain in force (unless they are cancelled) in relation to a released person until the date on which the released person would, but for release by virtue of the regulations, fall to be released under section 1(3).

(2) Standard conditions specified by the Scottish Ministers in regulations under section 3C(3) may include a curfew condition complying with section 12AB.”.

**9 Duty to engage in release planning**

30 (1) The Community Justice (Scotland) Act 2016 (“the 2016 Act”) is amended as follows.

(2) After section 34 (innovation, learning and development activity) insert—

*“Engagement in release planning*

**34A Duty to engage in release planning**

35 (1) Each person falling within subsection (2) must, so far as reasonably practicable, comply with a request by the Scottish Ministers to engage in the development, management and delivery of a release plan.

(2) The persons are—

- (a) a local authority,
- (b) a health board,
- 40 (c) the chief constable of the Police Service of Scotland,

- (d) Skills Development Scotland,
- (e) an integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014.
- (3) Engagement under subsection (1) must take place within the timescale specified in the request.
- (4) In complying with subsection (1), a person—
- (a) must have regard to the role which third sector bodies are able to play in the development, management and delivery of the release plan,
- (b) may commission services from, or co-ordinate with existing services provided by, third sector bodies as the person considers appropriate to meet the needs of the individual to whom the release plan relates.
- (5) The Scottish Ministers may by regulations modify the list in subsection (2).
- (6) Regulations under this section are subject to the affirmative procedure.
- (7) In this section—
- “release plan” means a plan to—
- (a) prepare a relevant individual for release,
- (b) facilitate—
- (i) the individual’s reintegration into the community,
- (ii) access by the individual to relevant general services,
- “relevant general services” has the same meaning as in section 1,
- a “relevant individual” is an individual who has been—
- (a) remanded in custody, or
- (b) convicted of offences and sentenced to imprisonment or detention in a penal institution.”.

## **10 Throughcare support**

- (1) The 2016 Act is amended as follows.
- (2) After section 34A, as inserted by section 9, insert—

### *“Throughcare support*

#### **34B Throughcare support standards**

- (1) The Scottish Ministers must, no later than one year after this section comes into force, publish standards applicable to throughcare support in Scotland.
- (2) The standards—
- (a) must make provision for minimum standards and outcomes to be met by all providers of throughcare support in Scotland,
- (b) may make such further provision in connection with throughcare support as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers must keep the standards under review and may publish amended standards whenever they consider it appropriate to do so.

(4) In preparing, reviewing, and revising the standards, the Scottish Ministers must consult—

- (a) Community Justice Scotland,
- (b) each local authority,
- 5 (c) each health board,
- (d) the chief constable of the Police Service of Scotland,
- (e) Skills Development Scotland,
- (ea) the Risk Management Authority,
- (eb) Social Care and Social Work Improvement Scotland,
- 10 (f) an integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,
- (g) third sector bodies—
  - (i) involved in community justice and the provision of throughcare support,
  - 15 (ii) involved in or carrying out work related to the provision of support to children and families affected by imprisonment,
- (ga) a person—
  - (i) of a description prescribed by the Scottish Ministers by regulations, and
  - 20 (ii) who is providing support services to victims in relation to offences perpetrated against or in respect of those victims,
- (h) such other persons as the Scottish Ministers consider appropriate.

(5) Where revised standards are published under subsection (3), this section—

- (a) ceases to apply in relation to the previous standards,
- 25 (b) applies instead to the revised standards (as it applied to the standards published under subsection (1)).

(6) In this section—

“relevant general services” has the same meaning as in section 1,  
“support services”—

- (a) means any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim, and
- 30 (b) includes—
  - (i) providing the victim with information (including information provided under section 16ZA(3) of the Criminal Justice (Scotland) Act 2003),
  - 35 (ii) assisting the victim with safety planning,
  - (iii) assisting the victim with the making of representations under Part 2 of the Criminal Justice (Scotland) Act 2003,

“throughcare support” means in relation to individuals falling within subsection (7)—

- (a) the provision of advice and guidance,
- (b) the provision of, and facilitation of access to, opportunities to participate in activities designed to eliminate or reduce future offending,
- (c) the provision of, and facilitation of access to, emotional and practical support,
- (d) the provision of help, including in particular to—
  - (i) access and make use of relevant general services and any relevant specialist services which are available,
  - (ii) co-operate and comply with any relevant conditions, court orders, and ongoing judicial or court processes,
- (e) engagement in release planning in accordance with section 34A.

(7) An individual falls within this subsection if they have been either—

- (a) remanded in custody, or
- (b) convicted of offences and sentenced to imprisonment or detention in a penal institution.

(8) The Scottish Ministers may by regulations modify the definition of “support services” in subsection (6).

(9) Regulations under subsection (4)(ga)(i) and (8)—

- (a) may include incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) may modify enactments (including this Act).

(10) Regulations—

- (a) under subsection (4)(ga)(i)—
  - (i) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (ii) are otherwise subject to the negative procedure,
- (b) under subsection (8) are subject to the affirmative procedure.

### **34C Throughcare support standards: duty to comply**

(1) Each person falling within subsection (2) must, in exercising functions relating to the provision of throughcare support, comply with the standards published or revised under section 34B.

(2) The persons are—

- (a) each local authority,
- (b) each health board,
- (c) Skills Development Scotland,

(d) an integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,

(e) the Scottish Ministers.

(3) The Scottish Ministers may by regulations modify the list in subsection (2).

(4) Regulations under this section are subject to the affirmative procedure.”

## **11 Provision of information to victim support organisations**

(1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) After section 16 (victim’s right to receive information concerning release etc. of offender) insert—

### **“16ZA Provision of information to person supporting victim**

(1) This section applies where—

(a) a person entitled to receive information under section 16 (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to be given, as well as or instead of the victim, the information described in section 16(3) in relation to the person convicted of the offence perpetrated against the victim, or

(b) a supporter intimates to the Scottish Ministers that they wish to be given that information and Ministers are satisfied that the victim consents to the supporter being given the information.

(2) This subsection applies to a person—

(a) of a description prescribed by the Scottish Ministers by regulations, and  
(b) who is providing support services to the victim in relation to the offence perpetrated against the victim.

(3) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, give the supporter such information as is described in section 16(3).

(4) Subsection (3) does not apply where the person convicted of the offence perpetrated against the victim is released before attaining the age of 16 years.

(5) In this section, “support services”—

(a) means any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim, and

(b) includes—

(i) providing the victim with information (including information provided under subsection (3)),

(ii) assisting the victim with safety planning,

(iii) assisting the victim with the making of representations under this Part.

(6) The Scottish Ministers may by regulations modify the definition of “support services” in subsection (5).

- (7) Regulations under subsection (2)(a) and (6) may—
- (a) include incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) modify enactments (including this Act).

5 (8) Regulations—

- (a) under subsection (2)(a)—
  - (i) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (ii) are otherwise subject to the negative procedure,
- (b) under subsection (6) are subject to the affirmative procedure.”.

10 (2A) After section 16C (information to be given under section 16A) insert—

**“16D Provision of information concerning offender subject to compulsion order to person supporting victim**

(1) This section applies where—

- 15 (a) a person entitled to ask to be given information under section 16A (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to be given, as well as or instead of the victim, the information described in section 16C about the person referred to in section 16A as O, or
- 20 (b) a supporter intimates to the Scottish Ministers that they wish to be given that information and Ministers are satisfied that the victim consents to the supporter being given the information.

(2) This subsection applies to a person—

- 25 (a) of a description prescribed by the Scottish Ministers by regulations, and
- (b) who is providing support services to the victim in relation to the offence in respect of which O has been made subject to a compulsion order and a restriction order.

(3) The Scottish Ministers must give the information about O described in section 16C to the supporter.

30 (4) But the Scottish Ministers—

- (a) need not give the supporter information under this section if they consider there to be exceptional circumstances which make it inappropriate to do so,
- 35 (b) are not to give the supporter information about the terms of a condition in accordance with section 16C(2)(h) unless the condition is relevant to the victim as described in section 18A(3).

(5) Subsection (3) does not apply where O has not attained the age of 16 years.

(6) If the compulsion order or restriction order to which O has been made subject is revoked, subsection (3) ceases to apply when the Scottish Ministers give the victim or, as the case may be, the supporter the information that—

- 40 (a) the order has been revoked, and

(b) the decision to revoke it is final.

(7) In this section, “support services” has the same meaning as in section 16ZA(5).

(8) Regulations under subsection (2)(a)—

(a) may—

(i) include incidental, supplementary, consequential, transitional, transitory or saving provision,

(ii) modify enactments (including this Act),

(b) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,

(c) are otherwise subject to the negative procedure.”.

(3) After section 17 (release on licence: right of victim to receive information and make representations) insert—

**“17ZA Release on licence: provision of information to person supporting victim**

(1) This section applies where—

(a) a person entitled to receive information under section 16 (the “victim”) as respects a convicted person intimates that they wish a person entitled to receive information under section 16ZA (the “supporter”) to be informed before any decision is taken to release the convicted person, or

(b) the supporter intimates that they wish to be so informed and the Scottish Ministers are satisfied that the victim consents to the supporter being so informed.

(2) The Scottish Ministers must, whether or not the victim has intimated the wish to be afforded the opportunity to make representations under section 17(1), give the supporter—

(a) notice as mentioned in section 17(5), (7) and (9), and

(b) the information mentioned in section 17(10).

(3) The Parole Board for Scotland must give the supporter the information mentioned in section 17(6) and (8) (whether or not the victim has intimated the desire to receive that information).

(4) Subsections (2) and (3) do not apply where the convicted person has not attained the age of 16 years by the date on which the case is referred to the Parole Board by the Scottish Ministers.

(5) This section does not apply—

(a) as respects release under section 3 of the 1993 Act (release on compassionate grounds),

(b) where the victim’s entitlement to receive information under section 16 arises by virtue of section 16(4)(a).”.

(4) In section 17A (temporary release: victim’s right to make representations about conditions)—

(a) for subsection (1) substitute—

“(1) This section applies where—

(a) by virtue of subsection (1) or (5) of section 16 a person (the “victim”),  
 or

(b) by virtue of section 16ZA(3), a person entitled to receive information  
 under that section (the “supporter”),

is given the information mentioned in section 16(3)(d) as respects a convicted  
 person.”,

(b) in subsection (4)(b), after “victim” insert “or, as the case may be, the supporter”.

(4A) After section 17D (right to information after section 17B decision) insert—

**“17DA Section 17B decision: provision of information to person supporting victim**

(1) This section applies where—

(a) a person entitled to receive information under section 17D (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to receive, as well as or instead of the victim, the information, or

(b) a supporter intimates to the Scottish Ministers that they wish to receive that information and Ministers are satisfied that the victim consents to the supporter receiving the information.

(2) This subsection applies to a person—

(a) of a description prescribed by the Scottish Ministers by regulations, and

(b) who is providing support services to the victim in relation to the offence in respect of which the person referred to in section 17B as O has been made subject to—

(i) a hospital direction,

(ii) a transfer for treatment direction, or, as the case may be,

(iii) a compulsion order and a restriction order.

(3) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, inform the supporter that the decision under section 17B has been taken.

(4) Subsection (5) applies where—

(a) in accordance with subsection (3), the Scottish Ministers have informed the supporter that the Tribunal has decided to make an order revoking a compulsion order or restriction order, and

(b) by virtue of section 196 of the Mental Health Act, the Tribunal's order does not have effect because the Court of Session has made an order under section 323(1) of that Act.

(5) The Scottish Ministers must—

(a) inform the supporter that the Court of Session has made an order under section 323(1) of the Mental Health Act, and

(b) give the supporter the information that they would have had to give the supporter by virtue of section 16C(4) had the Court not made that order.



(6) In this section, “support services” has the same meaning as in section 16ZA(5).

(7) Regulations under subsection (2)(a)—

(a) may—

(i) include incidental, supplementary, consequential, transitional, transitory or saving provision,

(ii) modify enactments (including this Act),

(b) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,

(c) are otherwise subject to the negative procedure.”.

(4B) In section 17E (information sharing in respect of mentally-disordered offenders)—

(a) in subsection (1)—

(i) for “or 16A” substitute “, 16ZA, 16A or 16D”,

(ii) after “(“V”)” insert “or, as the case may be, a supporter”,

(b) in subsection (3), after “17D” insert “or to a supporter under section 16ZA, 16D or 17DA”,

(c) in subsection (5), for “or 16A” substitute “16ZA, 16A or, as the case may be, 16D”,

(d) after subsection (5) insert—

“(6) In this section, “supporter” is to be construed in accordance with section 16ZA, 16D or, as the case may be, 17DA.”.

(4C) In section 18A (interpretation)—

(a) in subsection (3)—

(i) after “16A(3)(b)” insert “, 16D(4)(b)”,

(ii) in paragraph (b), after “V” insert “or, as the case may be, a supporter”,

(b) after subsection (4) insert—

“(5) In this section, “supporter” is to be construed in accordance with section 16D or, as the case may be, 17DA.”.

(4D) In section 18B (power to modify Part)—

(a) in subsection (1)(a), for “16A and 16B,” substitute “16ZA, 16A, 16B, 16D(5) and 17ZA(4),”,

(b) in subsection (2)(a), for “section 16A” substitute “sections 16A and 16D”,

(c) in subsection (3), after “16A” in both places insert “, 16D”.

(5) In section 87(1) (interpretation), in the definition of “prescribed”, for “section” substitute “sections 16ZA(2)(a), 16D(2)(a), 17DA(2)(a) and”.

(6) The Victims and Witnesses (Scotland) Act 2014 is amended as follows.

(7) After section 27A (notification of victims in relation to release etc. of short-term prisoners) insert—

**“27B Provision of information to person supporting victim**

- (1) This section applies where—
- (a) a person entitled to receive information under section 27A (“V”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to be given, as well as or instead of V, the information described in section 27A(1) in relation to the person sentenced to imprisonment or detention (“A”), or
  - (b) a supporter intimates to the Scottish Ministers that they wish to be given that information and Ministers are satisfied that V consents to the supporter being given the information.
- (2) This subsection applies to a person—
- (a) of a description prescribed by the Scottish Ministers by regulations, and
  - (b) who is providing support services to V in relation to the offence perpetrated against V by A.
- (3) The Scottish Ministers must notify the supporter of the matters mentioned in section 27A(1).
- (4) Section 27A(2) and (3) apply to notification under subsection (3) as they apply to notification under section 27A(1).
- (5) In this section, “support services” has the same meaning as in section 16ZA(5) of the 2003 Act.
- (6) Regulations under subsection (2)(a) may—
- (a) include incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) modify enactments (including this Act).
- (7) Regulations under subsection (2)(a)—
- (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (b) are otherwise subject to the negative procedure.”.

**PART 3**

## FINAL PROVISIONS

**12 Interpretation**

In this Act—

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993,

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995,

“the 2016 Act” means the Community Justice (Scotland) Act 2016.

**13 Ancillary provision**

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

5 (2) Regulations under subsection (1) may—

- (a) modify any enactment (including this Act),
- (b) make different provision for different purposes.

(3) Regulations under subsection (1)—

- 10 (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
- (b) otherwise are subject to the negative procedure.

**14 Commencement**

(1) This section and sections 12, 13 and 15 come into force on the day after Royal Assent.

15 (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under subsection (2) may—

- (a) include transitional, transitory or saving provision,
- (b) make different provision for different purposes.

**15 Short title**

20 The short title of this Act is the Bail and Release from Custody (Scotland) Act 2023.

# **Bail and Release from Custody (Scotland) Bill**

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the determination of questions of bail; to provide for the court, when sentencing, to have regard to time spent on certain bail conditions; to ensure prisoners are not released on Fridays and certain other days; to provide for the temporary release of long-term prisoners; to enable certain prisoners to be released early in emergency situations; to require certain public bodies to engage in planning for the release of prisoners; to provide support for released prisoners; to provide for information about prisoners to be given to persons or bodies supporting victims; and for connected purposes.

Introduced by: Keith Brown  
On: 8 June 2022  
Bill type: Government Bill

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