

These notes relate to the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9) which received Royal Assent on 9 August 2000

BAIL, JUDICIAL APPOINTMENTS ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 1 – Bail

5. This Part of the Act consists of four sections.

Section 1 (Consideration of bail on first appearance)

6. **Section 1** inserts a new section 22A into the 1995 Act.
7. Section 22A(1) imposes a duty on the sheriff or judge of the district court, on an accused person's first appearance, to consider automatically the question of whether the accused should be given bail. At first appearance, the accused person or their legal representative will no longer require to make a bail application before the issue will be considered. This provision applies whether the person has been arrested by virtue of a “petition”, i.e. the offence is serious enough to merit solemn proceedings and trial on indictment before a jury, or charged on “complaint”, i.e. for a lesser offence which can be tried by a sheriff or judge of the district court alone.
8. Section 22A(2) gives the sheriff or judge the power to defer taking a bail decision on first appearance for up to 24 hours. A deferral may be necessary if insufficient evidence is available to allow an immediate decision to be taken. This is in line with the existing provisions in section 23 of the 1995 Act which allow a 24-hour continuation where a person is charged on complaint or where a person arrested on petition has already been committed. Prior to the committal of a person arrested on petition, the sheriff is not bound by any limit of time on his bail decision but, in practice, a 24-hour limit is usually applied. The existing provisions will apply to bail applications made after first appearance.
9. Section 22A(3) provides that if the bail decision is not taken within the period of 24 hours, the accused person must be liberated. This is in line with the existing position in section 23 of the 1995 Act in relation to bail applications.
10. Section 22A(4) requires the court to consider bail whether or not the accused is already in custody when he is brought before the sheriff or judge.

Section 2 (Bail and liberation where person already in custody)

11. **Section 2** inserts a new section 23A into the 1995 Act.
12. Section 23A ensures that the fact that an accused person is already in custody for another matter cannot in itself be a reason for a refusal to consider bail. The court will be required to consider, in the usual way, whether it is appropriate to grant bail for the new offence. Section 23A(1) provides that the court's duty applies to an accused person who is already in prison, either serving a sentence of imprisonment or having been refused

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bail for another crime or offence. Section 23A(2) makes it clear that an accused person in custody, who is admitted to bail for the new offence, is not liberated from his existing custody, i.e. the accused person will not be released, until the reason for the existing custody expires.

13. Section 23A(3) makes it clear that where a person is already in custody on another matter, any requirement to liberate that person under section 22A(3) or section 23(7) as a consequence of the court failing to make a bail decision within the 24-hour period, does not release him from that existing custody.
14. Section 23A(4) defines the expression “another crime or offence” in section 23A to mean a matter other than the crime or offence which is the subject of the current bail proceedings.

Section 3 (Removal of restrictions on bail)

15. **Section 3** removes the existing statutory restrictions in sections 24 and 26 of the 1995 Act which prevented a sheriff from considering bail for certain serious offences. Although the High Court or the Lord Advocate had (and still have) power to grant bail for any crime or offence, the sheriff had no power to grant bail for any person charged with murder or treason or for any person charged with attempted murder, culpable homicide, rape or attempted rape who had a previous conviction for any of those offences, murder or manslaughter. Subsection (1) removes the exclusion in section 24 of the 1995 Act applying to the crimes of murder and treason. Subsection (2) repeals section 26 of the 1995 Act so as to remove the exclusions which apply to other serious offences.

Section 4 (Removal of restriction on appeals against refusal of bail)

16. **Section 4** amends section 32 of the 1995 Act. This section makes provision for appeals against bail decisions but prevented an accused arrested on petition, who had been refused bail, appealing to the High Court against any refusal which resulted from an application made before committal. An appeal could be made only against the refusal of any subsequent application made after committal. The amended provision will allow all accused persons to appeal a refusal of bail by the sheriff under the new section 22A and the refusal of any subsequent bail application.