



# Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

## PART 1

### BAIL

#### 1 Determination of questions of bail

After section 23A of the 1995 Act there is inserted—

##### **“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.

### **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 outwith 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);

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- (iv) whether the person is serving or recently has served a sentence of imprisonment in connection with a matter referred to in subparagraphs (i) to (iii) above;
- (e) the associations and community ties of the person.

### **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 a violent or sexual offence; and
  - (b) has a previous conviction on indictment for a violent or sexual offence.
- (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.
- (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);
  - “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.
- (5) Any reference in this section to a conviction on indictment for a violent or sexual offence or a drug trafficking offence includes—
  - (a) a conviction on indictment in England and Wales or Northern Ireland for an equivalent offence;
  - (b) a conviction in a member State of the European Union (other than the United Kingdom) 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.”.