

CHAPTER 8 – BAIL

8.01 GENERAL

The statutory provisions relating to bail are contained, in the main, in Part III of the Criminal Procedure (Scotland) Act 1995 (herein after referred to as the 1995 Act). A list of all statutory provisions relating to bail contained within the 1995 Act can be found in the bail manual.

Procurators Fiscal require to make decisions on the question of bail on a regular basis, and it is essential that these decisions are fair and consistent.

Article 5 of the European Convention of Human Rights provides for a fundamental right to liberty, but Procurators Fiscal must in every case in which they consider the question of bail, carry out an assessment of the risk an accused person is likely to pose to:

1. The general and particular members of the public, and/or
2. The course of justice

should they be released. Where a substantial risk to either of these categories can be identified, that risk may justify the detention of an accused person.

8.02 LIBERATION BY POLICE

By virtue of section 22 of the 1995 Act, where a person (other than a child) has been charged with an offence which may be tried summarily, the officer who charged the person or the officer in charge of a police station has three options. He may -

- (a) detain the accused in custody; or
- (b) liberate the accused on a written undertaking; or
- (c) liberate him for report.

Where the police consider that the Procurator Fiscal is likely to proceed on petition the police should not liberate the accused.

Where the police decide to liberate the accused on a written undertaking, the accused will be required to appear at a specific court on a specified day at a specified time.¹ In addition, he may be required to comply with certain standard conditions of bail imposed by the police and/or any further conditions the officer considers necessary.²

Guidelines relating to the liberation of accused persons have been issued to the police and a copy of these, along with further information on undertakings is incorporated in the Bail Manual.

¹ Criminal Procedure (S) Act 1995 section 22(1C)

² Criminal Procedure (S) Act 1995 section 22(1D)

8.03 INITIAL DECISION TO PROSECUTE OR LIBERATE

Where an accused person has been apprehended by the police and detained in custody, it is within the discretion of the Procurator Fiscal to liberate that accused person, after considering the available evidence and the full circumstances of the case. The Procurator Fiscal is entitled to exercise this discretion either before or after the case has been formally reported by the police. Liberation at this stage does not prevent the Procurator Fiscal from raising proceedings in relation to the same matter at any point in the future, provided that neither the accused person nor his legal representative have been advised by the Procurator Fiscal that there will be no such proceedings. Care should be taken to ensure that any correspondence on such matter to the accused or his legal representative could not be interpreted as being a renunciation of the right to prosecute (unless, of course, that is the case).³

However, where the Procurator Fiscal is satisfied that there is sufficient evidence against the accused person detained in custody by the police, and that it would be in the public interest to prosecute that person, the matter of bail must be considered.

8.04 FIRST APPEARANCE

In all cases reported to the Procurator Fiscal, whether or not the accused person is in custody, the issue of bail must be considered.

On the first occasion on which a person appears on petition or summary complaint, the sheriff or 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.⁴

Admittance to or refusal of bail shall be determined before the end of the next court day after the day on which the person accused or charged is brought before the sheriff or judge.⁵ 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 liberated.⁶

Following first appearance, any person accused on petition of a crime shall be entitled immediately, on any occasion on which he is brought before the sheriff prior to his committal until liberated in due course of law, to apply to the sheriff for bail, and the prosecutor shall be entitled to be heard against any such application.⁷

In summary matters, any person charged on complaint with an offence shall, on any occasion on which he is brought before a judge having jurisdiction to try the offence, be entitled to apply to the judge for bail, and the prosecutor shall be entitled to be heard against any such application.⁸

8.05 BAIL AND LIBERATION WHERE PERSON ALREADY IN CUSTODY

³ Thom v HMA 1976 JC 48; HMA v Robert Weir 2005 HCJ AC 122

⁴ Criminal Procedure (Scotland) Act 1995, Section 22A(1)

⁵ Criminal Procedure (Scotland) Act 1995 Section 22A(2)

⁶ Criminal Procedure (Scotland) Act 1995 Section 22A(3)

⁷ Criminal Procedure (Scotland) Act 1995 Section 23(1)

⁸ Criminal Procedure (Scotland) Act 1995 Section 23(6)

An accused person may be admitted to bail although they

- Are already in custody in relation to another matter
- Have been refused bail in respect of another crime or offence
- Are serving a sentence of imprisonment.

However, the decision to admit to bail will not affect the issue of custody in respect of the other crime or offence, nor will it affect the sentence of imprisonment. Accordingly, where an accused person has been admitted to bail in such a situation, he will not be liberated at that time.⁹

8.06 ENTITLEMENT TO BAIL AND THE FUNCTION OF THE COURT

As a result of the Bail, Judicial Appointments etc (Scotland) Act 2000, all crimes are now bailable, although the nature and gravity of an offence remains a valid ground of opposition to bail. Accordingly, *'bail is to be granted to an accused person except where there is a good reason for refusing bail.'*¹⁰

The attitude of the prosecutor towards the question of bail does not restrict the court in any way, although the court will be informed by the prosecutor's attitude. The court must make the final decision as to the question of bail regardless of the prosecutor's view, but in order to determine the question, the court may request the prosecutor (or the accused person's representative) to provide it with relevant information.¹¹

The Procurator Fiscal should, where possible, be in a position provide any information requested by the court. In particular, the Procurator Fiscal must be in a position to provide

- the schedule of previous convictions for the accused person
- details of the charges relating to any bail order libelled
- a short statement outlining the circumstances of the case, similar to the information contained in a custody statement prepared where the Procurator Fiscal intends to oppose bail. (In summary cases the disclosable summary should suffice for this purpose)

Procurators Fiscal should not provide details of any operational matters to the court, nor should details of any intelligence contained within the police report be provided, as such information would also require to be made available to the accused.

Further, the Procurator Fiscal is not obliged to offer to the court a view on the risk of something occurring should the accused person be admitted to bail (although such an assessment may form part of the Procurator Fiscal's opposition to bail).¹²

8.07 STATUTORY PROVISIONS IN RELATION TO THE QUESTION OF BAIL

⁹ Criminal Procedure (Scotland) Act 1995 Section 23A

¹⁰ Criminal Procedure (Scotland) Act 1995 Section 23B(1)

¹¹ Criminal Procedure (Scotland) Act 1995 Section 23B(3) and (4)

¹² Criminal Procedure (Scotland) Act 1995 Section 23B(7)

The statutory provisions as to the reasons for the refusal and granting of bail can be found in the Criminal Procedure (Scotland) Act 1995, at sections 23C and Section 23D. Procurators Fiscal must be familiar with these provisions.

Section 23C states that, 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, **abscond or fail to appear;**
- (b) Any substantial risk that the person might, if granted bail, **commit further offences;**
- (c) Any substantial risk that the person might, if granted bail, **interfere with witnesses or 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.

Section 23C further states that, in assessing these matters, the court must have regard to all material considerations, including (where relevant):-

- (a) The nature, including level of seriousness of the offences before the court and the 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
 - (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 has recently served a sentence of imprisonment in connection with a matter referred to in sub-paragraphs (i) to (iii) above.
- (e) The association and community ties of the person.

8.08 STATUTORY RESTRICTIONS ON BAIL IN CERTAIN SOLEMN CASES

In addition to the general statutory provisions as to the reasons for the granting or refusal of bail contained in section 23C of the 1995 Act, there are statutory restrictions on bail in certain solemn cases contained within section 23D of the 1995 Act, as follows:

- (a) Where a person is in solemn proceedings accused of a violent or sexual offence and has a previous conviction on indictment for a violent or sexual offence, then bail will be granted only if there are exceptional circumstances.¹³
- (b) Where a person is in solemn proceedings accused of a drug trafficking offence and has a previous conviction on indictment for a drug trafficking offence, then bail will be granted only if there are exceptional circumstances.¹⁴

For the purposes of Section 23D, a conviction on indictment includes a conviction on indictment in England and Wales or Northern Ireland for an equivalent offence, and 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.

8.09 PROCURATOR FISCAL'S ATTITUDE TO BAIL

It is essential that decisions of the Procurator Fiscal in relation to the question of bail should be seen to be both fair and consistent. Accordingly, careful consideration should be given to the following paragraphs, in addition to the statutory provisions and restrictions detailed in paragraphs 8.07 and 8.08, when making decisions on bail.

Once the Procurator Fiscal has decided to raise proceedings against an accused person, the following options are open to the court in terms of the accused's liberation:-

- (a) **Ordain** the accused to appear;
- (b) Admit the accused to **bail** on the **standard bail conditions**;
- (c) Admit the accused to **bail**, subject to both the standard bail conditions and certain **additional** or **special conditions**;
- (d) **Remand** the accused in custody.

The Procurator Fiscal will be required to invite the court to follow one of these options, although the final decision is for the court.

8.10 ORDAIN TO APPEAR

In summary matters, the Procurator Fiscal must consider whether release on bail is required or whether the accused need only be ordained to appear at subsequent diets.

In summary proceedings, where there is no information to suggest that there will be a risk to the public or a risk to the course of justice through, for example, offending on bail or failure to appear, there may be no need to make the accused's release subject to his acceptance of bail conditions.

¹³ Criminal Procedure (Scotland) Act 1995 Section 23D(2)

¹⁴ Criminal Procedure (Scotland) Act 1995 Section 23D(3)

Procurators Fiscal must consider the possibility of asking the court to ordain the accused to appear even in situations where the person has been released on an undertaking by the police to appear at court and conditions have been attached to that undertaking by the police.

The accused should only be considered for release on bail where it is intended that he will be “held” to his acceptance of the conditions of bail, and action will be taken should he breach these conditions. Bail is a significant status and breach of bail is a serious offence.

8.11 BAIL ON STANDARD CONDITIONS

If the Procurator Fiscal is satisfied, having considered the terms of sections 23C and 23D of the 1995 Act, that bail is appropriate, then the court should be so advised.

If the court agrees, and neither the court nor the Procurator Fiscal consider that additional or special conditions are required, then the accused person will be released on standard bail conditions.

The standard conditions which the court will impose are 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 the 1995 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;
- (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 for which he is charged;
- (e) Where the (or an) offence in respect of which he is admitted to bail is one to which Section 288C of the 1995 applies, does not seek to obtain other than by way of a solicitor, any precognition of or statement by the complainer in relation to the subject matter of the offence.

8.12 BAIL WITH CERTAIN ADDITIONAL OR SPECIAL CONDITIONS

In determining the question of bail, the court must consider the extent to which the public interest could, if bail were granted, be safeguarded by the imposition of bail conditions.¹⁵

Accordingly, it is necessary for both the court and the Procurator Fiscal to give consideration to what, if any, additional or special conditions could be imposed as an alternative to custody. Procurators Fiscal should remember that it will be open to the court to impose additional or special conditions even when the Procurator Fiscal does not consider these appropriate, or where the Procurator Fiscal wishes the accused to be remanded in custody, and, as such, relevant information on potential additional or special conditions should be readily available and, where appropriate, provided to the court.

Additional or special conditions should only be requested by the Procurator Fiscal where:

- (1) a refusal to accept such conditions by an accused person would lead the Procurator Fiscal to ask the court to remand the accused in custody, and
- (2) where action will be taken should an accused person breach such conditions.

Any additional or special conditions requested by the Procurator Fiscal should relate to the particular accused or the nature of offending involved and should, where possible, follow the styles contained in the Bail Manual.

8.13 MONETARY BAIL

However, 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 case¹⁶. Monetary conditions cannot be imposed where an accused person is admitted to bail under section 65(8)(C) of the 1995 Act.¹⁷ (See 8.15 below for details on the accused's obligation to meet pre-release bail conditions).

Where the accused or a cautioner on his behalf has deposited a sum of money in court under section 24(6) of the 1995 Act and the accused then fails to appear at the time and place appointed for any diet of which he has been given due notice, the court may, on the motion of the prosecutor, immediately order forfeiture of the sum deposited¹⁸. The Procurator Fiscal should always make a motion for forfeiture in such a situation, unless there are exceptional circumstances for not doing so.

If the accused fails to comply with any other bail condition imposed, the court may, on conviction of the offence under Section 27 (1)(b) of the 1995 Act and on the motion of the prosecutor, order forfeiture of the sum deposited.¹⁹ This cannot be done unless and until the accused has actually been convicted of the section 27(1)(b) charge. The Procurator Fiscal

¹⁵ Criminal Procedure (Scotland) Act 1995 Section 23B (2)

¹⁶ Criminal Procedure (Scotland) Act 1995, Section 24 (6)

¹⁷ Criminal Procedure (Scotland) Act 1995 Section 24(6)(A).

¹⁸ Criminal Procedure (Scotland) Act 1995 Section 29(1)(A).

¹⁹ Criminal Procedure (Scotland) Act 1995 Section 29 (1)(B).

should always make a motion for forfeiture following conviction of the section 27(1)(b) charge, unless there are exceptional circumstances for not doing so.

8.14 COURT'S OBLIGATIONS IN RELATION TO BAIL CONDITIONS

The court is now obliged to carry out a number of actions in relation to bail. Procurators Fiscal must be familiar with the court's responsibilities.

In an attempt to ensure that the bail and remand system is transparent and can be understood by those involved in and affected by it, whenever the court grants or refuses bail, it shall state its reasons.²⁰ Furthermore, when granting bail, the court shall (if the accused is present) explain to the accused in ordinary language the effect of the conditions imposed and the consequences that may follow if there is a breach of any of those conditions.

In addition to receiving a copy of the bail order, the accused shall also be given a further written explanation in ordinary language of the effect of the bail conditions imposed and the consequences which may follow a breach of any of those conditions. Such written explanation may be contained in the copy of the bail order given to the accused or in another document.²¹

Where the court grants bail to a person accused of a sexual offence²² and does so without imposing on the accused additional or special conditions, the court shall state why it considers that such conditions are unnecessary.²³

8.15 DOMICILE

The court shall specify in the order granting bail, a copy of which is given to the accused, the conditions imposed, that breach of a condition imposed is an offence and renders the accused liable to arrest, prosecution and punishment, and an address within the United Kingdom which shall be his proper domicile of citation.²⁴

This address will be the accused's normal place of residence or such other place as the court may, on cause shown, direct.²⁵

The court may on application in writing by the accused while he is on bail alter the address specified in the order granting bail, and this new address shall, as from such date as the court may direct, become the proper domicile of citation.²⁶ Any such application must be intimated to the Crown Agent or Procurator Fiscal for the sheriff court district in which bail was granted, and before determining the application the prosecutor must be given an opportunity to be heard.²⁷

²⁰ Criminal Procedure (Scotland) Act 1995 Section 24(2A)

²¹ Criminal Procedure (Scotland) Act 1995 Section 25B(1) & 25C(1)

²² Criminal Procedure (Scotland) Act 1995 Section 210A(10) and (11)

²³ Criminal Procedure (Scotland) Act 1995 Section 24(2B)

²⁴ Criminal Procedure (Scotland) Act 1995 Section 25(1)

²⁵ Criminal Procedure (Scotland) Act 1995 Section 25(1)(b)

²⁶ Criminal Procedure (Scotland) Act 1995 Section 25(2)

²⁷ Criminal Procedure (Scotland) Act 1995 Section 25(2A)

Where the domicile of citation specified in the bail order ceases to be the accused's normal place of residence, the accused must make such an application within 7 days of this happening.²⁸ If the accused does not do so, he is guilty of an offence and liable on conviction in the JP court to a fine or imprisonment for a period not exceeding 60 days (or both), and in any other case a fine or imprisonment for a period not exceeding 12 months (or both).²⁹

8.16 PRE-RELEASE BAIL CONDITIONS

In certain circumstances the court may impose conditions which have to be satisfied before the accused is released. The conditions may include, for example, the deposit of a document such as a passport. If the document is handed over at the court hearing the accused should be released immediately, but if s/he requires time to arrange for the lodging of the document s/he should be remanded in custody and released from prison only when the document has been deposited with the clerk of court.

The Procurator Fiscal must establish with the clerk of court after a week has elapsed whether the accused has met any pre-release conditions. Where an accused has failed to comply with any pre-release condition, the Procurator Fiscal should contact the solicitor acting for the accused person and bring the matter to their attention. It should be made clear to the defence that an application to review bail must be made immediately, to resolve the situation.

If the defence do not intend immediately to make an application under section 30 of the 1995 Act, or the accused person is unrepresented, the Procurator Fiscal should make an application to review bail under section 31 of the 1995 Act in light of the accused person's failure to comply with the pre-release condition.

8.17 CURRENCY OF BAIL ORDER

A bail order continues in force until the case has been disposed of. It is not affected by the fact that

- an indictment is called and deserted³⁰,
- that the accused is in custody on another matter
- that the diet was continued in his absence³¹

Generally speaking, it can be said that a bail order will continue in force throughout the proceedings unless it is formally recalled, which recall should be minuted by the sheriff clerk.

Where a warrant is taken in respect of the accused's failure to appear at a diet, the bail conditions remain in force until the accused has been taken into custody on the warrant.³²

A person released on bail pending appeal whose appeal is refused remains subject to the bail order until he has been taken back into custody.³³

²⁸ Criminal Procedure (Scotland) Act 1995 Section 25(2B)

²⁹ Criminal Procedure (Scotland) Act 1995 Section 25(2C)

³⁰ *Jamieson v HM Advocate*, 1990 S.L.T. 845

³¹ *Walker v Lockhart*, 1994 S.L.T. 209

³² *Walker v Lockhart*, 1994 S.L.T. 209

³³ *Mayo v Neizer*, 1994 S.L.T. 931

Where an accused has been granted bail and is later ordained to appear at an adjourned diet because he has been taken into custody in the meantime, the bail order continues in force unless the court specifically replaces it with an order ordaining the accused to appear.³⁴

Where bail has been granted on petition and the charge is subsequently dealt with on summary complaint, the bail order applies to the summary complaint, and it is not necessary to grant bail anew on that complaint.³⁵

Although it will generally fall to the Sheriff Clerk to cancel a bail order, where a Procurator Fiscal decides to abandon proceedings against an accused who has been liberated on bail without the case calling in court, it is essential that COPFS systems are updated and that the police and the clerk of court are informed. This must be done immediately to avoid the possibility of wrongful arrest.

8.18 REMAND IN CUSTODY

If the Procurator Fiscal is satisfied, having regard to the full circumstances of the case and the terms of sections 23C and 23D of the 1995 Act, that bail is not appropriate, then a motion should be made to have the accused person remanded in custody for trial.

A clear and substantive submission should be made to the court in any case where there is a motion to remand an accused person in custody. In particular, Procurators Fiscal should avoid simply making reference to the material considerations outlined in section 23C(2), such as the existence of previous convictions or the fact that the accused person was subject to a bail order when the new offences are alleged to have been committed without further explanation.

While such factors do require to be brought to the court's attention during the motion for remand, the principal focus of the motion must be that **there is a substantial risk that the accused will, if released**

- **Abscond or fail to appear**
- **Commit further offences**
- **Interfere with witnesses or otherwise obstruct the course of justice, or**
- **In some other way threaten public safety**

Where imprisonment is not a competent disposal, or is considered to be an unlikely disposal, bail should not normally be opposed. Procurators Fiscal should, however, remember that where an accused person has breached bail or failed to appear at court in relation to an offence where imprisonment is not competent, or is considered to be an unlikely disposal, the breach of bail or failure to appear is an offence in itself which carries a sentence of imprisonment.

A separate complaint or petition should be raised in relation to the breach of bail or failure to appear, and consideration given to opposing bail on that matter.

³⁴ Fitzpatrick v Normand, 1994 S.C.C.R. 272

³⁵ McGinn v HM Advocate, 1990 S.C.C.R. 170

8.20 LORD ADVOCATE'S BAIL

In terms of section 24(2) of the 1995 Act, the Lord Advocate has the power to admit to bail any person charged with a crime or offence, even after it has been refused, or not sought, at an earlier stage in the proceedings.

Further information on Lord Advocate's Bail can be found in the Bail Manual.

8.21 SOLEMN PROCEDURE - COMMITTAL FOR FURTHER EXAMINATION

At the stage of committal for further examination, the full circumstances of the case and the terms of sections 23C and 23D of the 1995 Act must be considered in order to reach a decision on bail. In addition to these general considerations, opposition to bail at first appearance will be appropriate where enquiries are not complete and the detention of the accused is essential to allow the remaining enquiries to be made.

If, however, special bail conditions can be imposed which would allow the further enquiries to be carried out without any risk of prejudice to those continuing enquiries or investigations, and there is otherwise no need for a motion for remand, then the Procurator Fiscal should ask the court to grant bail subject to those conditions.

Bail may require to be opposed at first appearance, although it may not ultimately be opposed at full committal, but Procurators Fiscal should be aware that an accused may competently apply for bail (by way of an appeal against an original remand) between the stages of committal for further examination and full committal, in terms of section 32 of the 1995 Act.

Where the Procurator Fiscal makes a motion to commit the accused for further examination and states that the Crown is continuing to make enquiries and that it is necessary in the proper pursuit of those enquiries, in the public interest, that the accused should remain in custody at that stage, the Procurator Fiscal must provide sufficient general information to allow the sheriff to consider the merits of the motion. Exactly what information is required will depend on the facts of each case, but it will not suffice simply to state that there is a fear that the accused would interfere with witnesses or premises the police wish to search, without further explanation. It will not, however, be necessary to disclose operational details.³⁶

Where bail is opposed at first appearance because enquiries are not complete, but the enquiries are completed before the date scheduled for full committal, the case should be brought back before the court as soon as the enquiries are completed so that, if appropriate, the accused can apply to the court to be released from custody, if bail is not to be opposed.

There may be only one source of evidence at the stage of committal for further examination. The court is entitled, however, to remand an accused person in custody on the basis of only one source of evidence at this stage (all that is required is a reasonable suspicion, as opposed to the *prima facie* corroborated case which is required for summary proceedings and full committal). If, however, it becomes clear during the remand period that the Procurator Fiscal will not seek to move for full committal, as no second source of evidence is available (or for

³⁶ Burns Petitioner 2000 SLT 538

any other reason), steps should be taken to liberate the accused from the specific warrant of committal immediately.

Alternatively, the accused person should be brought back to court and invited to apply for bail, in order that a domicile of citation can be obtained and any appropriate special bail conditions requested. The Procurator Fiscal must, however, make clear to the court that there is no motion for full committal – and on that basis the accused cannot be remanded in custody. If an accused person is remanded in custody, despite the absence of a motion to fully commit, the case should be brought to the immediate attention of the District Fiscal.

8.22 SOLEMN PROCEDURE - FULL COMMITTAL

Where bail has been opposed at the stage of committal for further examination, and there is sufficient evidence for the Procurator Fiscal to move to fully commit the accused, the Procurator Fiscal must at the stage of full committal consider afresh the issue of bail.

8.23 CUSTODY STATEMENTS

In all cases where bail is to be opposed, Procurators Fiscal should disclose to the defence a brief written summary of the evidential basis upon which proceedings have been taken. This procedure is followed because in terms of Article 5(4) of the European Convention of Human Rights whenever an individual's liberty is at risk in criminal proceedings, the proceedings must afford him the right to challenge the lawfulness of the detention which may follow in conditions which amount to 'equality of arms'.

Where, however, the Procurator Fiscal does not oppose bail, but the court takes the view that the accused person should be remanded in custody, there will be no written custody statement prepared although the court will have had regard to the submission of the prosecutor.

In order to ensure that Procurators Fiscal are in a position to provide orally to the court a brief summary of the evidential basis upon which proceedings have been taken, it will be necessary in all solemn cases, at the time of marking the case, to note a brief written summary of the evidence on the papers. If it becomes clear that the court wishes to remand an accused person in custody, the Procurator Fiscal should advise the court, in the presence of the accused person and his legal representative, of the content of that summary.

In summary cases, the accused will receive a disclosable summary of the evidence against him at the time the complaint is served upon him, which provides the equivalent information to a conventional custody statement.

8.26 BAIL ON ADJOURNMENT BEFORE SENTENCE

In both solemn and summary cases, where the court adjourns a case before sentence in terms of either section 200 or 201 of the 1995 Act, the court can

- remand the accused in custody
- admit the accused to bail
- commit the accused to hospital (in terms of section 200 only)
- ordain the accused to appear (in terms of section 201 only).

In terms of section 32A of the 1995 Act, the prosecutor and the convicted person must be given the opportunity to make submissions in relation to the question of bail at this stage.

The attitude of the prosecutor toward the question of bail does not restrict the court's discretion in determining the issue, but if the prosecutor has information which suggests that it would be appropriate to express a view on the question of bail, then a view should be expressed.

Procurators Fiscal should pay careful attention to any information within the case papers or available to VIA suggesting that special conditions of bail might be appropriate at this stage and bring any such information to the court's attention.

In any event, the Procurator Fiscal should provide such information as the court may require to reach a decision on the matter.

The prosecutor has no right to appeal the decision made by the court at this stage, but the convicted person may do so. In terms of s32A of the 1995 Act, however, the prosecutor must be given an opportunity to make submissions in relation to the question of bail at the time the appeal is heard. Again, if the prosecutor has information which suggests that it would be appropriate to express a view on the question of bail at this stage, then a view should be expressed.

8.27 BAIL REVIEW BY ACCUSED PERSON

In terms of section 30 of the 1995 Act, an accused person may make an application for review of the court's initial decision on bail, including the conditions imposed, if

1. the circumstances of the accused person have changed materially, or
2. the accused person puts before the court material information which was not previously available.

Section 30 applies to both accused persons who have been admitted to bail but who have failed to accept the conditions imposed and accused persons who have accepted the conditions imposed on bail but wish to have them removed or varied.

The prosecutor must be given a right to be heard at such a review³⁷ and the Procurator Fiscal must give careful consideration to the change in circumstances or additional information available before considering the attitude to bail at this stage. The Procurator Fiscal must be in a position to confirm that the circumstances of the accused person have in fact changed

³⁷ Criminal Procedure (Scotland) Act 1995 section 30(2A)

materially or there is clear material information before the court which was not available to it when its decision was made. If neither of these conditions applies, the Procurator Fiscal should advise the court accordingly.

Unless the change in circumstances or additional information are compelling it will not usually be appropriate for Procurators Fiscal to adopt a position different to the one initially taken.

A review of this nature cannot be made before the 5th day after the original decision of the court, or, if it relates to a subsequent decision, the 15th day thereafter³⁸.

If the review relates to a solemn case, post conviction, the accused must intimate the application immediately in writing to the Crown Agent and the application will be heard not less than 7 days after the date of intimation³⁹.

8.28 BAIL REVIEW ON PROSECUTOR'S APPLICATION

Section 31 of the 1995 Act allows the Prosecutor, at any time after the court has granted bail, to put before the court material information which was not available when bail was originally granted, and to ask the court to review its original decision in light of that information.

On receipt of an application under section 31, the court will intimate the application to the accused person granted bail, fix a diet for hearing the application and cite the accused to attend that diet, or grant a warrant to arrest the accused. On hearing the application, the court may withdraw the grant of bail and remand the accused in custody or continue the grant of bail either on the same or different conditions.

Procurators Fiscal should ensure that this power is exercised whenever new information comes to light which is sufficiently material to have made it probable that the court would have remanded the accused in custody or imposed special conditions had the information been available when the court's initial decision was made.

This power should also be used where any significant error in the bail order subsequently becomes apparent, and it does not reflect the outcome of the court hearing, such as an error in a special bail condition.

Where an application is made under this section in solemn cases post conviction, the application will be heard not more than 7 days after the date the application is made⁴⁰.

There is no statutory time period in relation to any other application under this section.

8.29 BAIL APPEALS

In terms of section 32 of the 1995 Act, where bail is refused (or where the accused is dissatisfied with the amount of money bail fixed), he may appeal to the High Court.

³⁸ Criminal Procedure (Scotland) Act 1995 section 30(3)

³⁹ Criminal Procedure (Scotland) Act 1995 section 30

⁴⁰ Criminal Procedure (Scotland) Act 1995 section 31(2B)

Under the same section, where in any case bail is granted or, in summary proceedings, an accused is ordained to appear, the prosecutor may appeal to the High Court if dissatisfied

- with the decision to grant bail
- with the amount of money bail fixed
- in summary proceedings that the accused has been ordained to appear

Where the prosecutor appeals to the High Court in relation to the initial bail decision, the accused shall not be liberated until the appeal is disposed of. However, such appeals must be heard within 72 hours from the granting of bail. **If the appeal is not heard within 72 hours, the accused shall be liberated.**

The High Court should interfere with the decision of a sheriff only if it considers that the sheriff has exercised their discretion wrongly. Accordingly, an appeal should only be marked if the Procurator Fiscal is satisfied that the sheriff exercised their discretion wrongly – either by failing to take particular factors into account, or by wrongly taking into account particular factors.

Procurators Fiscal should always make clear on the case papers at the time of marking whether an appeal is to be marked by the court depute if bail is granted by the sheriff, or special conditions sought by the Crown not imposed. The depute in court, however, has the final responsibility in such a situation, and must assess whether an appeal should be marked taking into account:

- The Procurator Fiscal's original marking and the reasoning behind that
- Any reliable information put forward by the defence
- The reasons stated by the sheriff for the bail decision

8.30 PROCEDURES FOR PROCESSING BAIL APPEALS

If a Crown appeal has been marked against a decision made by a sheriff, upon return from court the Procurator Fiscal should contact the bail trainees in the High Court unit by e-mail (to advise them of the position. Thereafter, the person who conducted the proceedings should immediately prepare a report for Crown Office.

If it is clear at the time an accused person is remanded that a defence appeal is to be lodged, a report in relation to such an appeal should again be prepared by the person conducting the proceedings and sent to Crown Office.

The draft roll for the bail appeal court is sent by Justiciary to the High Court unit in Crown Office. The draft roll contains details of cases due to call in the bail appeal court 2 days later. Upon receipt of the draft roll, High Court Registry will send an e-mail to offices with cases appearing on the roll, confirming that a report will be required for the appeal hearing.

The following day, the High Court trainees receive the final roll for the next day's court. The final roll often contains many cases which did not appear on the draft roll. Requests for reports relating to the additional cases will be sent by e-mail by the High Court trainees at this time.

Procurators Fiscal should ensure that all bail appeal reports are forwarded to the bail trainees in Crown Office, electronically, as soon as possible and not later than 3 pm on the day before the bail appeal hearing.

8.31 BAIL APPEAL REPORTS

A bail appeal report **must** contain the following information: -

- (1) The full procedural history of the case.
- (2) The history of the accused, including any relevant personal circumstances of the accused known to the Procurator Fiscal.
- (3) The reasons the Procurator Fiscal **provided to the court** in support of the motion for remand. These reasons should be outlined in full – it is insufficient, for example, simply to state “record”. If the criminal record of the accused was the primary reason for seeking a remand in custody, the particular previous convictions relied upon by the Procurator Fiscal should be highlighted in the report.
- (4) If the remand was made by the court with no opposition by the Procurator Fiscal, the reasons why there was no opposition to bail.
- (5) The reasons put forward by the defence in support of liberation, if known.
- (6) In Crown appeals, the factors that the Procurator Fiscal considers the sheriff failed to take into account or wrongly took into account.
- (7) The reasons given by the sheriff for the bail decision, and any report provided by the sheriff in this regard which is available to the Procurator Fiscal
- (8) Confirmation that any bail aggravations libelled are actually extant, particularly where have been challenged.
- (9) A note of any special conditions imposed at the initial bail hearing and any issues arising.
- (10) Details of any special conditions thought necessary should the accused be liberated following appeal, and reasons as to why these are required.
- (11) A summary of any reports produced to the sheriff to assist in the decision making process, or a copy of any such report.
- (12) Any other relevant information.
- (13) The name and direct telephone number of the author of the bail appeal report.

8.32 INFORMATION FOLLOWING BAIL APPEAL

Following the bail appeal court, the High Court trainee who has been present at court will update the court roll and then forward the updated roll electronically to VIA and all PF offices. The updated roll will contain all available information, including the result of the appeal, any special conditions imposed and detail of cases which may have been continued and the reason for the continuation.

It is the responsibility of VIA staff and individual offices to access the final roll to obtain the relevant information for onward transmission to victims and other interested parties.

8.33 LIBERATION OF ACCUSED FOLLOWING BAIL APPEAL

An accused person has no legal entitlement to be present at a bail appeal hearing, provided s/he is represented.⁴¹

In order to ensure that there is the minimum of delay between the granting of bail on appeal and the liberation of the accused, it has been agreed that the Prison Governor will be responsible for serving a copy of the High Court interlocutor on the accused, along with a written explanation, in ordinary language of the effect of the bail conditions imposed and the consequences which may follow a breach of any of those conditions.

These arrangements apply to cases where:-

- (a) Bail is refused by the inferior court but is subsequently granted by the High Court on appeal; and
- (b) The Crown appeals against the granting of bail by the inferior court and the High Court, although refusing the Crown appeal, imposes additional conditions or alters the conditions imposed by the inferior court.

Where the accused's appeal is successful, or the Crown appeal is refused, the Clerk of Justiciary will telephone the prison with the result of the appeal. In the case of an unsuccessful Crown appeal the accused will be released immediately as he should have already accepted the bail conditions in the inferior court. Where the High Court itself has determined the conditions of release, it will be the Governor's duty to serve on the accused a copy of the High Court interlocutor granting bail and the written explanation in ordinary language of the effect of the bail conditions imposed and the consequences of any breach of these. A copy of the High Court interlocutor will be served on the accused, who will require to sign the acceptance form to signify acceptance of the bail conditions. The form will also be signed by 2 prison officers. If the accused refuses to sign the acceptance form he will not be released from custody.

In accepting the bail conditions, the accused will be released assuming also that any pre release conditions have been met. The prison will then send the acceptance form to Justiciary Office to be retained with the bail appeal papers in case an extract to conform with Section 28(6) of the 1995 Act is required. For those cases where the bail conditions have been imposed by a High Court it will be the Clerk of Justiciary and not the Clerk of the inferior court, who will sign the extract from the minutes of proceedings.

The clerk of the inferior court will receive a copy of the High Court interlocutor from Justiciary Office and a copy of the acceptance form from the Prison.

8.34 INTERIM LIBERATION

Where an accused person is convicted and sentenced to a period of imprisonment and he intends to appeal his conviction or sentence or both, it is open to him, in both solemn and summary proceedings, to apply to be liberated pending determination of the appeal.

In solemn proceedings, the application is made to the High Court under section 112 of the 1995 Act. The application must set out the reasons why bail should be granted, and, where a note of appeal has not been lodged, the proposed grounds of appeal.

⁴¹ DL v HMA 4 September 2007

If a single judge refuses bail, the convicted person may appeal that decision to a full court but he must indicate his intention to do so immediately.

If bail is granted by a single judge the Crown can appeal this decision. Intimation of such an appeal must be given at the initial hearing immediately after the judge has indicated that bail is to be granted. Where the Crown intimates an intention to appeal, the grant of bail will be suspended until the hearing of the full court, which must take place within 7 days.⁴²

In summary proceedings, an application must be made to the court of first instance, under section 177 of the 1995 Act. An application for bail under this section must be disposed of by the court before the end of the next court day after the day on which the application is made.

If bail is refused or the appellant is dissatisfied with the conditions imposed, the appellant may, within 24 hours after the judgement of the court, appeal against the decision by a note of appeal written on the complaint. The appeal will be held before the High Court, or any judge thereof, either in court or in chambers, and the court or judge has the power to review the decision of the inferior court and to grant bail on such conditions as the court or judge may think fit, or to refuse bail.

The Crown has no right of appeal in relation to a decision made in terms of section 177 of the 1995 Act, but at all stages of applications for interim liberation in both solemn and summary proceedings, the Crown has a right to be heard.

8.35 PROCURATOR FISCAL'S ATTITUDE TO INTERIM LIBERATION

When a convicted person makes an application for interim liberation, the Crown has a right to be heard. Accordingly, in any such case the question of whether or not to make representations must be considered. The interest of the victim along with the general public interest must be assessed, along with any other relevant information of which the Crown is aware.

⁴² Criminal Procedure (Scotland) Act 1995 Section 105A

8.36 PROCEDURES FOR INTERIM LIBERATION APPLICATIONS IN SOLEMN PROCEEDINGS

An application for interim liberation under section 112 of the 1995 Act must be intimated in writing to the Crown Agent and the application must be heard not less than 7 days after that intimation.

When this intimation is received in Crown Office, it will be passed to the Appeals unit, who should already be in receipt of the case papers in relation to the substantive appeal. The papers will be passed to a member of qualified legal staff who will prepare a report for Crown Counsel.

The report must contain the following information:-

- The charges on which the accused was convicted;
- A note of anything special or unusual about those charges;
- The sentence imposed;
- The procedural history;
- The nature of the appeal pending;
- Any reasons for opposing interim liberation;
- The suitability of the bail address offered;
- Victim issues;
- Any special conditions of bail, which should be considered by the court.

Where an application for interim liberation in solemn proceedings is made at an early stage and the case papers are not with the Appeals unit, the Procurator Fiscal will be contacted and asked to prepare this report, which should contain the information listed above.

Following court, a member of the Appeals unit will contact the relevant VIA official and advise the outcome of the appeal.

It is important that all staff are aware that **applications for interim liberation can be made at any time**, and should any information become available which might be relevant to any such application it should be passed to the Appeals unit in Crown Office immediately.

8.37 PROCEDURES FOR INTERIM LIBERATION APPLICATIONS IN SUMMARY PROCEEDINGS

An application for interim liberation under section 177 of the 1995 Act must be disposed of by the court before the end of the day after the day on which the application is made.⁴³

Where an accused person makes an application for interim liberation in summary proceedings, the sheriff clerk will immediately notify the Procurator Fiscal of that application by telephone, followed up by e-mail. The question of whether or not to make representations must then be considered by the Procurator Fiscal. The interest of the victim along with the general public interest must be assessed, along with any other relevant information of which the Crown is aware.

⁴³ Criminal Procedure (Scotland) Act 1995 section 177(2)

After reaching a decision on whether representations should be made, the Procurator Fiscal will notify the sheriff clerk of this decision, again by telephone and then followed up by e-mail. Should the Procurator Fiscal wish to be heard, the sheriff clerk will fix a hearing in chambers, at which parties can make representations. This must be done before the end of the day after the day on which the application is made.

If the Procurator Fiscal does not wish to be heard, the interim liberation application will be processed by the sheriff in chambers, with representations from the defence if required. The sheriff clerk will then notify the Procurator Fiscal of the outcome of the application.

8.38 BREACH OF BAIL

It is a specific offence to breach bail conditions by:

- Failing to appear for a court diet, or
- Breaching any other condition of bail (except the condition relating to offending while on bail)

It is not a separate offence to commit a further (subsequent) offence while on bail⁴⁴, but it is an aggravation to the subsequent offence.

8.39 OFFENDING ON BAIL

Where an accused person commits a subsequent offence while on bail, the court must have regard to the following factors when determining the appropriate sentence or disposal for the subsequent offence;

1. The fact that the offence was committed while on bail
2. The number of bail orders to which the accused was subject when the offence was committed
3. Any previous convictions for breach of any bail condition, and
4. The extent to which any sentence imposed on a previous conviction was affected by the fact that the offence in question had been committed on bail.⁴⁵

After having regard to these matters it is open to the court to increase any sentence imposed to take into account the fact that the offence was committed whilst the accused was on bail. Where the sentence is one of imprisonment, the sentence in respect of High Court or Sheriff Court convictions can be increased by up to 6 months and the sentence in respect of convictions in the JP Court can be increased by up to 60 days.⁴⁶

Where a sentence is increased in this way, the court must state the period by which it has increased the sentence and, more particularly, where a sentence is not increased despite the fact that the offence was committed while the accused was on bail, the court must state the reasons for that.⁴⁷

⁴⁴ Criminal Procedure (Scotland) Act 1995 section 27(3)

⁴⁵ Criminal Procedure (Scotland) Act 1995 section 27(3)

⁴⁶ Criminal Procedure (Scotland) Act 1995, section 27(5)

⁴⁷ Criminal Procedure (Scotland) Act 1995, section 27(6) & (6A)

The court can only have regard to the fact that the subsequent offence was committed on bail if that fact is libelled in the indictment or specified in the complaint.⁴⁸ Accordingly, in every case where it appears that an offence was committed while on bail, a bail aggravation should be added to the charge. To do so does not constitute a breach of the European Convention of Human Rights, even where the averment is made known to the jury.⁴⁹

Where an accused is alleged to have committed several offences while on bail, a bail aggravation should be added to each charge. Where an accused is alleged to have committed an offence while subject to more than one bail order, the charge should contain reference to all of the bail orders in force at the time of the subsequent offence.

However, where the charge libelled in the police report is a contravention of section 27 of the 1995 Act, the bail order to which that charge relates and refers should not be libelled as an aggravation to the charge, that being considered by the court as double jeopardy.⁵⁰

The fact that the subsequent offence was committed whilst the accused was on bail shall, unless challenged, be held as admitted.⁵¹ If this fact is challenged, and cannot subsequently be agreed, Procurators Fiscal will require to prove that the accused was on bail at the time of the subsequent offence. It will be necessary to prove that the bail order in question was in fact imposed on the accused at the time and place alleged and that the bail order was still in force at the time of the subsequent offence.

8.41 FAILURE TO APPEAR

If an accused person has been granted bail and fails to appear at any diet of which he has been given due notice, a warrant for his arrest should be obtained and passed immediately to the police for execution. It must be assumed that if a warrant has been granted there is no reasonable excuse for non-appearance.

An accused person who has been granted bail in relation to summary proceedings and subsequently fails without reasonable excuse to appear at the time and place appointed for any diet of which he has been given due notice or at which he is required by the 1995 Act to appear is guilty of an offence in terms of section 27(1)(a) of the 1995 Act. If convicted of an offence under s27(1)(a), the penalties are a fine not exceeding level 3 on the standard scale and a period of imprisonment not exceeding 60 days if convicted in the JP court or a period of imprisonment not exceeding 12 months in any other case.

Where an accused person has been granted bail in relation to solemn proceedings and fails without reasonable excuse to appear at the time and place appointed for any diet of which he has been given due notice (where such diet is in respect of solemn proceedings) he shall be guilty of an offence in terms of section 27(7) of the 1995 Act. If convicted on indictment, under s27(7), the penalties are a fine and imprisonment for a period not exceeding 5 years.

⁴⁸ Criminal Procedure (Scotland) Act 1995 section 27(4)

⁴⁹ Boyd v HMA 2000 SLT 1358

⁵⁰ Michael Robertson v PF Airdrie 2007 HCJ AC 22

⁵¹ Criminal Procedure (Scotland) Act 1995, section 27(4A)

The sentence for contravening section 27 and the sentence imposed on the substantive matter will run consecutively.⁵²

The forum for proceedings for failure to appear should be the same forum as the original proceedings.

- If the original offence is on summary complaint where possible a fresh complaint should be prepared incorporating the original charges and the offence under section 27(1)(a). In the event of, for example, time bar difficulties, a separate complaint containing the offence under section 27(1)(a) should be served and, in the event of the accused pleading not guilty, the court should be invited where practicable to fix the same diets as have been fixed for the original offence.
- Where the original offence is a solemn matter, the accused should be placed on Petition for a contravention of section 27(7). The failure to appear charge (section 27(7)) should subsequently be prosecuted on the same indictment as the original matter. If the matter has already been indicted, Procurators Fiscal should be aware that at any time before the trial of an accused person under solemn procedure for the original offence it is competent to amend the indictment to include an additional charge under section 27 and to include in the list of witnesses or productions relating to the original offence witnesses or productions relating to the section 27 offence.⁵³

In proceedings under section 27(1) or section 27(7) of the 1995 Act, the fact that an accused person

1. was on bail
2. failed to appear at a diet, or
3. was given due notice of a diet

shall, unless formally challenged, be held as admitted.⁵⁴

8.43 FAILURE TO APPEAR WHERE ORDAINED TO APPEAR

Where an accused person is ordained to appear and subsequently fails to appear for any court diet of which he has been given due notice, a warrant should be obtained and passed immediately to the police for execution.

8.44 FAILURE TO APPEAR POST-CONVICTION

Where an accused person fails to appear at a post-conviction hearing and the court grants a warrant for that failure to appear, the warrant must be passed immediately to the police for execution by the clerk, with the appropriate warrant category noted thereon.

8.45 BREACH OF BAIL CONDITIONS

⁵² Criminal Procedure (S) Act 1995 section 27(9A)

⁵³ Criminal Procedure (S) Act 1995 section 27(8)

⁵⁴ Criminal Procedure (S) Act 1995 section 27(4B)

If an accused person fails to comply with any condition of bail (other than by failing to appear or offending on bail – see above) he is guilty of an offence under section 27(1)(b) of the 1995 Act. This section applies to both summary and solemn proceedings.

If convicted of an offence under section 27(1)(b), the penalties for both summary and solemn proceedings are a fine not exceeding level 3 on the standard scale and imprisonment for a period not exceeding 60 days in the JP Court and not exceeding 12 months in any other case.

The sentence for contravening section 27(1)(b) and the sentence imposed for the substantive offence will run consecutively.⁵⁵

The forum for proceedings for a contravention of section 27(1)(b) will depend on the nature of the breach. Where the conduct of the accused is a criminal act in itself, such as assault or breach of the peace, the case should be marked for proceedings in the court which is most appropriate for the criminal act committed. The section 27(1)(b) charge, for breaching bail, should be added to that complaint, petition or indictment.

Where the only charge is to be one of section 27(1)(b) (i.e. where the conduct does not in itself amount to a criminal offence) if the bail order breached was imposed for a solemn matter the case should be marked for proceedings on petition. Thereafter, the charge should be included on the indictment for the original matter, or added to it if an indictment has already been served on the accused. If the bail order was imposed for a summary matter, the case should be marked for proceedings in the summary court in which the bail order was imposed. This should be done either by raising a fresh complaint with both the original charge and the contravention of section 27(1)(b), or by raising a new complaint with only the section 27(1)(b) charge and inviting the court, where practicable, to fix the same diets as have been fixed for the original offence.

In any proceedings under section 27(1)(b) of the 1995 Act, the Procurator Fiscal will require to prove the circumstances constituting the breach of the condition, but the fact that an accused person was

1. On bail, and
2. Subject to any particular condition/s

shall, unless formally challenged, be held as admitted.⁵⁶

8.47 SECTION 28

Section 28(1) of the 1995 Act provides that a constable may arrest without warrant an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking or is likely to break any condition imposed on his bail. No corroboration of the constable's suspicions or the actings of the accused are required for an arrest under section 28(1).

⁵⁵ ⁵⁵ Criminal Procedure (S) Act 1995 section 27(9A)

⁵⁶ Criminal Procedure (S) Act 1995 section 27(4B)

An accused so arrested must be brought before the court on the next court day after his arrest and it is open to the Procurator Fiscal at that time to request that the original bail order be recalled or varied, regardless of the fact that there may be insufficient evidence to prove a charge under section 27 of the 1995.

Before asking the court to recall or vary bail, the Procurator Fiscal must arrange with the clerk of court for the original case papers to be placed before the judge. The court should be able to deal with the matter without requiring a written application to recall or vary the bail order. The Procurator Fiscal should also advise the accused's agent when the case will call. The Procurator Fiscal should provide the court with the facts which led to the arrest of the accused and move the court, according to the circumstances, either to recall or to vary the order. The accused or the defence solicitor must be given the opportunity to reply.

The court may then,

- Recall the bail order and remand the accused for trial
- Release the accused under the original order granting bail; or
- Vary the order granting bail so as to contain such conditions as the court thinks it necessary to impose to ensure that the accused complies with the standard bail conditions.⁵⁷

As a general rule Procurators Fiscal should ask the court to review bail in terms of section 28 only where there is insufficient evidence to support a separate charge of breaching bail conditions.

If the Procurator Fiscal does not intend to move the court to recall or vary the order under section 28, the accused should be released and not put before the court, and the terms of the original bail order will stand.

⁵⁷ Criminal Procedure (Scotland) Act 1995, section 28(4)