

## Bail and Release from Custody (Scotland) Bill — Stage 3

### Section 1

#### Maggie Chapman

15 In section 1, page 1, line 21, at end insert—

<( ) after subsection (6) insert—

“(6A) Where relevant to a question of bail, and without prejudice to the generality of subsection (6), the court may in particular request the prosecutor to provide it with information in relation to the risk of harm to the complainer.”>

#### Maggie Chapman

16 In section 1, page 1, line 22, leave out <, after “party” in each> and insert <—

- (i) for “that party” in the first place where it occurs substitute “the prosecutor, the accused person’s solicitor or counsel, or an officer of a local authority”,
- (ii) after “party” in the second>

### Section 2

#### Jamie Greene

17 In section 2, page 2, leave out line 9 and insert—

<(ab) at least one of the following grounds applies—

- (i) the accused person is likely to breach their bail conditions,
- (ii) the accused person is likely to commit further offences whilst on bail,
- (iii) the accused person if granted bail is likely to abscond or fail to appear at a diet of the court as required,
- (iv) the accused person if granted bail is likely to interfere with witnesses or otherwise obstruct the course of justice,
- (v) there is another substantial factor which appears to the court to justify keeping the person in custody, or>

#### Angela Constance

18 In section 2, page 2, line 13, leave out from second <safety> to <from> in line 14 and insert <protection of the complainer from a risk of>

#### Jamie Greene

19 In section 2, page 2, line 15, after <justice.> insert—

<(1B) When determining whether it is necessary to refuse bail for the safety of the complainer from harm, the complainer may make representations to the court regarding how they will be impacted if the accused person is granted, or refused, bail.>

**Jamie Greene**

20 In section 2, page 2, line 16, at end insert—

<(ba) after subsection (4) insert—

“(4A) The submission made by the prosecutor under subsection (4) must include—

(a) information in relation to the complainer’s safety or safety of other persons,

(b) information obtained from, or submitted by, a victim advocacy or support organisation in relation to the complainer’s safety or safety of other persons.”.>

**Maggie Chapman**

21 In section 2, page 2, line 18, leave out <subsection (1A)(b)(i)> and insert <subsections (1A)(b)(i) and (6A)>

**Jamie Greene**

22 In section 2, page 2, line 34, leave out subsection (3) and insert—

<( ) Section 23C (grounds relevant as to question of bail) is repealed.>

**Section 4**

**Jamie Greene**

23 In section 4, page 3, line 21, leave out <23C(1)(a) (substantial risk of absconding or failing to appear)> and insert <23B(1A)(ab)(iii) (likely to abscond or fail to appear)>

**Section 5**

**Jamie Greene**

24 In section 5, page 4, line 20, leave out <must> and insert <may>

**Jamie Greene**

25 In section 5, page 4, leave out lines 22 to 41

**Section 5A**

**Jamie Greene**

26 In section 5A, page 5, line 27, at end insert—

<( ) In preparing the report, the Scottish Ministers must consult persons providing victim support services.>

**Angela Constance**

27 In section 5A, page 6, line 2, at end insert—

<( ) the number of bail orders made in respect of—

- (i) individuals who were accused in solemn proceedings of a violent offence, a sexual offence, or a domestic abuse offence and had a previous conviction on indictment for any such offence, and
- (ii) individuals who were accused in solemn proceedings of a drug trafficking offence and had a previous conviction on indictment for such an offence.>

**Jamie Greene**

**28** In section 5A, page 6, line 2, at end insert—

<( ) the number of individuals released on bail who were subject to—

- (i) monitoring in accordance with Part 1 of the Management of Offenders (Scotland) Act 2019 (electronic monitoring),
- (ii) a bail condition under section 24(4)(b)(i) of the 1995 Act.>

**Jamie Greene**

**29** In section 5A, page 6, line 7, at end insert—

<( ) the number of individuals who entered the prison population—

- (i) following a conviction for a bail-related offence,
- (ii) having been accused of a further offence.>

**Angela Constance**

**30** In section 5A, page 6, line 8, at end insert—

<(za) include information on the operation of the modifications of enactments made by this Part, including in particular the repeal of section 23D of the 1995 Act,>

**Angela Constance**

**31** In section 5A, page 6, line 12, at end insert—

<( ) In preparing a report that includes the information mentioned in subsection (3)(za), the Scottish Ministers must consult—

- (a) the chief constable of the Police Service of Scotland,
- (b) the Lord Advocate,
- (c) the Scottish Courts and Tribunals Service,
- (d) each local authority,
- (e) persons who are providing support services to victims in relation to offences perpetrated against or in respect of those victims,
- (f) such other persons as the Scottish Ministers consider appropriate.>

**Angela Constance**

**32** In section 5A, page 6, line 15, at end insert—

<“domestic abuse offence” means—

- (a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, or
- (b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,

“drug trafficking offence” has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995,>

**Angela Constance**

33 In section 5A, page 6, line 22, at end insert—

<“sexual offence” has the meaning given by section 210A(10) and (11) of the 1995 Act,

“violent offence” means any offence (other than a sexual offence) inferring personal violence.>

**Jamie Greene**

34 In section 5A, page 6, line 22, at end insert—

<“victim support services” means a type of service or treatment which is intended to benefit the physical or mental health or wellbeing of victims.>

**Angela Constance**

35 In section 5A, page 6, line 22, at end insert—

<( ) Any reference in this section to an offence (other than a bail-related offence or a sexual offence) includes reference to—

- (a) an attempt, conspiracy or incitement to commit the offence,
- (b) aiding, abetting, counselling or procuring the commission of the offence.>

**After section 5A**

**Angela Constance**

36 After section 5A insert—

**<Recording of reasons for granting bail in certain solemn cases**

- (1) This section applies—
  - (a) where a person is accused of an offence in solemn proceedings and subsection (2) or (3) applies to the person,
  - (b) for the reporting period.
- (2) This subsection applies where the person—
  - (a) is accused in the proceedings of an offence falling within subsection (4), and
  - (b) has a previous conviction on indictment for an offence falling within that subsection.
- (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 such an offence.
- (4) An offence falls within this subsection if it is—
  - (a) a violent offence,
  - (b) a sexual offence, or
  - (c) a domestic abuse offence.
- (5) Where the court grants bail to a person to whom this section applies, the court must—
  - (a) state its reasons,
  - (b) have those reasons entered in the record of proceedings.
- (6) For the purposes of this section—
  - “domestic abuse offence” means—
    - (a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, or
    - (b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
  - “drug trafficking offence” has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995,
  - “reporting period” has the meaning given by section 5A(4),
  - “sexual offence” has the meaning given by section 210A(10) and (11) of the 1995 Act,
  - “violent offence” means any offence (other than a sexual offence) inferring personal violence.
- (7) Any reference in this section to an offence (other than a sexual offence) includes reference to—
  - (a) an attempt, conspiracy or incitement to commit the offence,
  - (b) aiding, abetting, counselling or procuring the commission of the offence.>

## Section 7

### Angela Constance

37 In section 7, page 7, line 19, at end insert—

<( ) in subsection (4)—

(i) in paragraph (a), after “large” insert “(including any identifiable group of people)”,

(ii) after that paragraph insert—

“(aa) protecting a victim or any member of a victim’s family,”>

### Angela Constance

38 In section 7, page 7, line 20, at end insert—

<( ) after subsection (7) insert—

“(7A) In subsection (4)(aa), “victim” means a person against or in respect of whom an offence has been committed by the prisoner.”>

**Angela Constance**

- 39 In section 7, page 7, line 36, after <large> insert <(including any identifiable group of people)>

**Angela Constance**

- 40 In section 7, page 7, line 36, at end insert—  
<(aa) protecting a victim or any member of a victim’s family,>

**Angela Constance**

- 41 In section 7, page 8, line 24, at end insert—  
<( ) In subsection (4)(aa), “victim” means a person against or in respect of whom an offence has been committed by the prisoner.>

**Section 8**

**Jamie Greene**

- 42 In section 8, page 12, line 9, after <section> insert <unless—  
( ) the person has served one half of their sentence, and  
( ) the release day is no>

**Angela Constance**

- 43 In section 8, page 12, line 41, at end insert—  
<(5A) The Scottish Ministers must, no later than one year after the date on which this section comes into force and in such manner as they consider appropriate, publish guidance about the application of subsection (4)(b).  
(5B) The Scottish Ministers may from time to time revise the guidance published under subsection (5A) and subsection (5C) applies to any revised guidance.  
(5C) The governor of a prison must have regard to guidance published under subsection (5A) in considering the application of subsection (4)(b) in relation to regulations made under this section.>

**Jamie Greene**

- 44 In section 8, page 13, leave out lines 9 and 10

**Jamie Greene**

- 45 In section 8, page 13, line 34, leave out from <unless> to end of line 20 on page 14

## Section 9

### Audrey Nicoll

- 46 In section 9, page 16, line 12, after “regulations” insert <—
- (a) make further provision about engagement in the development, management, and delivery of release plans,
  - (b)>

### Audrey Nicoll

- 47 In section 9, page 16, line 12, at end insert—
- <( ) Regulations under subsection (5)(a) may, in particular, make provision about—
    - (a) engagement in the development, management and delivery of release plans in relation to relevant individuals who, having been remanded in custody, are released from custody immediately on the conclusion of proceedings against them,
    - (b) the appointment of a person to lead the management and delivery of a relevant individual’s release plan following the individual’s release,
    - (c) how the duty of co-operation under section 35 is to operate in relation to the duty to engage in the development, management, and delivery of release plans under this section.
  - ( ) Regulations under subsection (5)(a)—
    - (a) may include incidental, supplementary, consequential, transitional, transitory or saving provision,
    - (b) may modify enactments (including this Act).>

### Angela Constance

- 48 In section 9, page 16, line 24, at end insert—

*<Guidance*

#### **34AB Guidance**

- (1) The Scottish Ministers must, no later than one year after the day on which section 9(2) of the Bail and Release from Custody (Scotland) Act 2023 comes into force for any purpose, publish guidance about engagement under section 34A(1).
- (2) Such guidance may, in particular, include provision about—
  - (a) the issuing of a request for engagement,
  - (b) compliance with a request for engagement,
  - (c) how the duty of co-operation under section 35 is to operate in relation to the duty to engage in the development, management, and delivery of release plans under section 34A(1).
- (3) In preparing, reviewing, and revising the guidance, the Scottish Ministers must consult—
  - (a) Community Justice Scotland,

- (b) each local authority,
- (c) each health board,
- (d) the chief constable of the Police Service of Scotland,
- (e) Skills Development Scotland,
- (f) the Risk Management Authority,
- (g) an integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,
- (h) each person—
  - (i) of a description prescribed by the Scottish Ministers by regulations, and
  - (ii) who is providing support services to victims in relation to offences perpetrated against or in respect of those victims,
- (i) such other persons as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers must keep the guidance under review and may publish revised guidance whenever they consider it appropriate to do so.
- (5) Where revised guidance is published under subsection (4), this section—
  - (a) ceases to apply in relation to the previous guidance,
  - (b) applies instead to the revised guidance (as it applied to the guidance published under subsection (1)).
- (6) In complying with a request to engage under section 34A(1), a person must have regard to guidance published under this section.
- (7) In this section, “support services” has the meaning given by section 34B(6).
- (8) The Scottish Ministers may by regulations modify the definition of “support services” in subsection (7).
- (9) Regulations under subsection (3)(g)(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 (3)(g)(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.>

## Section 10

### Angela Constance

49 In section 10, page 16, line 27, leave out “34A” and insert “34AB”.



**Angela Constance**

- 50 In section 10, page 16, line 30, leave out <one year after this section> and insert <two years after the day on which section 10(2) of the Bail and Release from Custody (Scotland) Act 2023>

**Angela Constance**

- 51 In section 10, page 16, line 31, after <Scotland> insert <(in this section, the “first standards”)>

**Angela Constance**

- 52 In section 10, page 16, line 32, after <The> insert <first>

**Angela Constance**

- 53 In section 10, page 16, line 37, after <the> insert <first>

**Angela Constance**

- 54 In section 10, page 16, line 38, leave out <amended> and insert <revised>

**Angela Constance**

- 55 In section 10, page 17, line 1, after first <the> insert <first>

**Angela Constance**

- 56 In section 10, page 17, line 17, leave out <a> and insert <each>

**Angela Constance**

- 57 In section 10, page 17, line 22, at end insert—

<(4A) The Scottish Ministers must, after consulting on the first standards in accordance with subsection (4) but before publishing those standards, publish a draft of the standards for public consultation for such period, of at least 12 weeks, as they consider appropriate.

(4B) The Scottish Ministers must, before or on publication of the first standards, publish a report setting out—

(a) the consultation process undertaken in order to comply with subsection (4A), and

(b) the ways in which views expressed during that process have been taken account of in preparing the first standards (or stating that no account has been taken of such views).>

**Angela Constance**

- 58 In section 10, page 17, line 25, at the beginning insert <(other than subsections (4A) and (4B))>

**Angela Constance**

- 59 In section 10, page 17, line 25, after second <the> insert <first>

## After section 11

### Angela Constance

60 After section 11 insert—

#### <Report on operation of Part 2

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the reporting period, lay before the Scottish Parliament a report on the operation of the modifications of enactments made by this Part.
- (2) In preparing the report, the Scottish Ministers must consult—
  - (a) Community Justice Scotland,
  - (b) each local authority,
  - (c) each health board,
  - (d) the chief constable of the Police Service of Scotland,
  - (e) Skills Development Scotland,
  - (f) the Risk Management Authority,
  - (g) the Parole Board for Scotland,
  - (h) Social Care and Social Work Improvement Scotland,
  - (i) each integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,
  - (j) third sector bodies—
    - (i) involved in community justice and the provision of throughcare support,
    - (ii) involved in or carrying out work related to the provision of support to children and families affected by imprisonment,
  - (k) persons who are providing support services to victims in relation to offences perpetrated against or in respect of those victims,
  - (l) such other persons as the Scottish Ministers consider appropriate.
- (3) In this section—

“health board” means a board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

“reporting period” means the period of 5 years beginning with the day after Royal Assent,

“Skills Development Scotland” means the company limited by guarantee registered in Scotland with company number SC202659,

“support services” has the meaning given by section 34B(6) of the 2016 Act (as inserted by section 10(2)),

“third sector bodies” means bodies (whether or not formally constituted) established for purposes which consist of, or consist mainly of, providing benefits for society (but do not include bodies established under an enactment).>

**Katy Clark**

61 After section 11, insert—

*<Impact on Management of Offenders etc (Scotland) Act 2005*

**Review of impact on the Management of Offenders etc (Scotland) Act 2005**

- (1) Within 3 years of Royal Assent, the Scottish Ministers must—
  - (a) review the impact of Part 2 of this Act on the operation of arrangements made under section 10 of the Management of Offenders (Scotland) Act 2005 (“the 2005 Act”),
  - (b) prepare and publish a report on the outcomes of that review.
- (2) A review under subsection (1) must, in particular, include consideration of whether any changes are required to national guidance in relation to—
  - (a) the monitoring of offenders covered by section 10(1) of the 2005 Act following release from custody,
  - (b) ensuring a consistent approach across Scotland.>

**Section 14**

**Angela Constance**

62 In section 14, page 25, line 13, after <sections> insert <5A,>

**Angela Constance**

63 In section 14, page 25, line 13, after <sections> insert <(Recording of reasons for granting bail in certain solemn cases),>

**Angela Constance**

64 In section 14, page 25, line 13, after <sections> insert <(Report on operation of Part 2),>

**Jamie Greene**

65 In section 14, page 25, line 14, at the beginning insert <Subject to subsection (2A),>

**Jamie Greene**

66 In section 14, page 25, line 15, at end insert—

- <(2A) Section 8 may not be brought into force until the Scottish Ministers have prepared and published a report detailing the current Scottish Prison Service procedure for responding to—
- (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),
  - (b) an event or situation which has resulted in any prison (or part of a prison) being unusable,

(2B) The report under subsection (2A) must—

- (a) state why the current procedure inadequately achieves the goals of—
  - (i) ensuring the security and good order of a prison and prisoners generally, and
  - (ii) protecting the health, safety and welfare of prisoners or those working in any such prison,
- (b) justify why the powers to release early that are inserted into the 1993 Act by section 8 will better achieve the goals set out in paragraph (a).>