STATUTORY INSTRUMENTS

2024 No. 1316 (S. 3)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

CRIMINAL PROCEDURE

EXTRADITION

The Bail and Release from Custody (Scotland) Act 2023 (Consequential Modifications) Order 2024

Made - - - - 9th December 2024

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(4) and (5) of the Scotland Act 1998(**a**).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. This Order may be cited as the Bail and Release from Custody (Scotland) Act 2023 (Consequential Modifications) Order 2024 and comes into force on the day after the day on which it is made.

2. This Order extends to Scotland only.

Amendment of the Criminal Procedure (Scotland) Act 1995

3.—(1) The Criminal Procedure (Scotland) Act 1995(**b**) is amended as follows.

(2) In section 24F (bail: extradition proceedings)(**c**), before subsection (1)(c)(i) insert—

"(ai) subsection (1A) of section 23C(**d**);".

(3) After section 24F(1), insert—

(**a**) 1998 c. 46. There are amendments to section 104 which are not relevant to this Order.
(**b**) 1995 c. 46.
(**c**) Existing section 24A (which was inserted by the Extradition Act 2003 (c. 41), section 199) was renumbered as section 24F by S.S.I. 2005/40, article 4(2).
(**d**) Subsection (1A) was inserted by the Bail and Release from Custody (Scotland) Act 2023 (asp 4), section 2(3)(b).

"(1A) In the application of the provisions of this Part by virtue of section 7(7) of the Extradition Act 2003(**a**) (identity of person arrested), those provisions apply with the modification that subsection (1A) of section 23C does not apply.".

Transitional and saving provision

4.—(1) For the purposes of any pre-2023 Act proceedings, section 23C of the Criminal Procedure (Scotland) Act 1995(**b**) applies to such proceedings by virtue of sections 7(7), 9(2) and 77(2) of the Extradition Act 2003 ("the 2003 Act") as it applied to such proceedings before the coming into force of section 2(3) of the Bail and Release from Custody (Scotland) Act 2023(**c**) ("the 2023 Act").

(2) In paragraph (1), "pre-2023 Act proceedings" means any proceedings relating to a person under the 2003 Act where—

(a) the designated authority received the Part 1 warrant in respect of the person under section 2 of the 2003 Act,

(b) the person was arrested under section 5 of the 2003 Act, or

(c) the Scottish Ministers(**d**) received the request for the extradition of the person to a category 2 territory under section 70 of the 2003 Act,

before the coming into force of section 2 of the 2023 Act.

(3) In paragraph (2)—

"designated authority" has the meaning given by section 2(9) of the 2003 Act;

"Part 1 warrant" has the meaning given by section 2(2) of the 2003 Act;

"Category 2 territory" has the meaning given by section 69(2) of the 2003 Act.

Ian Murray
Secretary of State
Office of the Secretary of State for Scotland

9th December 2024

(**a**) 2003 c. 41. There are amendments to section 7 by the Police and Justice Act 2006 (c. 48) and by the Policing and Crime Act 2009 (c. 26) which are not relevant to this Order.
(**b**) Section 23C was inserted by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 1.
(**c**) 2023 asp 4.
(**d**) Subject to exceptions which are not relevant to this Order, any function which falls under Part 2 of the Extradition Act 2003 to be exercised in relation to Scotland only is exercisable by the Scottish Ministers (see section 141 of that Act).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequential on section 2 of the Bail and Release from Custody (Scotland) Act 2023 ("the 2023 Act"). Section 2 of the 2023 Act amends the test which the court must apply when considering whether to grant bail to a person accused of or charged with an offence by amending the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). Sections 23B and 23C of the 1995 Act set out that test.

Section 2(3) of the 2023 Act limits the extent to which the court may refuse bail, in summary proceedings, on the ground specified in section 23C(1)(a) of the 1995 Act. That ground is based on a substantial risk that the accused, if granted bail, might abscond or fail to appear at court diets as required.

Section 2(3)(b) amends section 23C of the 1995 Act to provide that, when deciding on bail in summary proceedings, the court may only consider the section 23C(1)(a) ground of refusal in two sets of circumstances. The first is where the accused has failed to appear at a previous hearing of the case, having been granted bail or been ordained to appear. The second is where the accused is appearing before the court on a complaint charging an offence under section 27(1)(a) or 150(8) of the 1995 Act. Section 27(1)(a) makes it an offence for an accused who has been granted bail to fail, without reasonable excuse, to appear at a court diet as required. Section 150(8) makes it an offence for an accused to fail, without reasonable excuse, to appear at a court diet of which the accused has been given due notice.

Article 3(2) of this Order inserts new subparagraph (ai) into section 24F(1)(c) of the 1995 Act to provide that new section 23C(1A) of the 1995 Act (as inserted by the 2023 Act) will not apply in relation to bail decisions in extradition proceedings. Article 3(3) of this Order inserts new subsection (1A) into section 24F of the 1995 Act to provide that new section 23C(1A) will not apply in relation to bail decisions in proceedings under section 7 of the 2003 Act.

Article 4 of this Order provides that the modifications made by section 2(3) of the 2023 Act do not apply to extradition proceedings commenced before the coming into force of section 2 of the 2023 Act.

A full impact assessment has not been produced for this Order as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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