



Criminal Justice Committee
Scottish Parliament

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Your ref:
Our ref: KD/2023/LB

16 March 2023

Dear Convenor

RESPONSE TO THE CRIMINAL JUSTICE COMMITTEE

I thank you for the opportunity to give evidence to the Committee on 25 January 2023 in relation to the Bail and Release from Custody (Scotland) Bill.

During the evidence session I confirmed I would provide; further information in relation bail appeals, including outcomes; information on the availability of electronic monitoring of bail and supervised bail across local authorities; and information on the anticipated financial impact of the Bill for Crown Office and Procurator Fiscal Service (COPFS).

Bail appeals

The COPFS database is an operational database designed for case management purposes. It is not designed for statistical purposes and the information contained within it is structured accordingly. Having made enquiry with colleagues, I can advise that it is not possible to extract relevant information relating to the number of bail appeals and relevant outcomes. It may be that the Scottish Courts and Tribunals Service is in a position to assist in this regard.

Electronic monitoring and supervised bail

It is worth highlighting that a court order requiring electronic monitoring of a bail order and supervised bail (imposed as additional conditions of bail), whilst having similar purposes, are not the same thing.

Where bail is considered appropriate, an electronic monitoring order can be imposed by the court to monitor a relevant bail condition, typically a bail curfew condition, providing the court with a degree of reassurance that a particular condition of bail will be adhered to. The initial electronic monitoring suitability



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assessment is carried out by the relevant local authority and their report is provided to the court in advance of the custody hearing. The electronic monitoring service is provided by the contracted provider.

By contrast, bail supervision is a service provided by the local authority, either directly or via a commissioned third sector organisation, based on local needs and priorities.

I attach at Annex A the most recent list of local authorities providing an electronic monitoring assessment service. At present, there is no equivalent list of local authorities providing a bail supervision service and I am aware that availability varies nationally. This may be a matter which the Committee wishes to explore with local authorities.

Costs implications of the Bill for COPFS

COPFS provided written evidence regarding the Bill's Financial Memorandum to the Scottish Parliament's Financial and Public Administration Committee. This provides a broad overview of the anticipated financial impact of the proposed reforms. It is difficult for the resource impact of the provisions of the Bill to be fully assessed and considered and a specific estimate provided in the absence of a fuller understanding of the practical impact of the provisions, including any necessary change to our processes and increased requirement for communication between relevant organisations.

The evidence to the Financial and Public Administration Committee is attached at Annex B.

I trust that this information is of assistance to the Committee.

Yours faithfully



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Procurator Fiscal Policy & Engagement



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Annex A

LOCAL AUTHORITIES PROVIDING ELECTRONIC MONITORING ASSESSMENT SERVICE (AT 27 FEBRUARY 2023)

Green = LAs officially live

Red = LAs yet to go-live

Local Authority
1. Aberdeen
2. Aberdeenshire
3. Angus
4. Argyll and Bute
5. Clackmannanshire
6. Dumfries and Galloway
7. Dundee
8. East Ayrshire
9. East Dunbartonshire
10. East Lothian
11. East Renfrewshire
12. Edinburgh
13. Falkirk
14. Fife
15. Glasgow
16. Highland
17. Inverclyde (from 7.11.22)
18. Midlothian
19. Moray
20. Na h-Eileanan Siar
21. North Ayrshire
22. North Lanarkshire (live from 1/8/22)
23. Orkney
24. Perth & Kinross
25. Renfrewshire
26. Scottish Borders (live from 2/8/22)
27. Shetland (live from 1/8/22)
28. South Ayrshire (5.Dec 22)
29. South Lanarkshire (live from 1/8/22)
30. Stirling (from 6.3.23)
31. West Dunbartonshire (live from 29/8/22)
32. West Lothian



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Annex B

Financial Memorandum by Crown Office and Procurator Fiscal Service for Finance and Public Administration Committee, Scottish Parliament Bail and Release from Custody (Scotland) Bill 2022

The Financial Memorandum accompanying the Bill acknowledges that there will be an impact on the Crown Office and Procurator Fiscal Service (“COPFS”) and that training and updated guidance for prosecutors will be required as part of the implementation of reforms to bail.

In considering the financial implication associated with clause 1 of the Bill, COPFS note that it is not presently known what arrangements will be in place for local authorities to access information relevant to any representations which they may wish to make on the question of bail. If the intention is for the Crown to have an active role in greater engagement and information sharing, that will have a resource implication, principally for the National Initial Case Processing unit who receive reported cases from the police, but also other areas across COPFS.

It would not, for example, be appropriate to share the prosecutors bail instruction with an officer of a local authority, as that carries the inherent risk of disclosing sensitive information. Therefore, the provision of bespoke information may be required.

A process around the implementation of this provision of the Bill would require to be appropriately developed. If this had the effect of increasing the requirement for COPFS to communicate with relevant officers of the local authority in each case where bail requires to be considered at first appearance, this would have an associated financial impact.

COPFS also acknowledge the realistic potential that custody hearings and other procedural courts may take longer as a result of:

- (a) Clause 1 – the requirement for social work to provide the court with information relevant to the determination of bail; and
- (b) Clause 4 – where the court refuses bail those grounds and reasons for refusing bail must be entered in the record of proceedings. It is likely that this provision will increase the length of time that it takes for a person to appear before a court. This will have associated resource implications.

It is difficult for the resource impact of the provisions to be fully considered and a specific estimate provided in the absence of a fuller understanding of the practical impact of the provisions and associated processes.



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