

# Bail and Release from Custody (Scotland) Bill

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## 2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 15

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### After section 5

#### Katy Clark

6 After section 5, insert—

#### <Compliance with bail conditions

After section 203A of the 1995 Act (reports about organisations) insert—

#### “203B Consideration of bail conditions

- (1) This section applies where—
  - (a) a person has been convicted of an offence, and
  - (b) the person has spent a period of time on bail awaiting trial or sentence.
- (2) When passing the sentence, the court may have regard to the person’s compliance with any conditions of bail, including a condition which—
  - (a) requires the person to submit to monitoring in accordance with Part 1 of the Management of Offenders (Scotland) Act 2019 (electronic monitoring etc.),
  - (b) requires the person to submit to a curfew.”.>

#### Angela Constance

8 After section 5, insert—

#### <Report on bail and remand

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the reporting period, prepare and publish a report on bail and remand.
- (2) The report must include the following information for each year of the reporting period—
  - (a) the average daily remand population,
  - (b) the total number of individuals within the remand population,

- (c) the number of individuals who entered the remand population by reference to each of the following characteristics—
    - (i) the offence (or type of offence) in respect of which the individual was remanded in custody,
    - (ii) the individual’s gender,
    - (iii) the local authority area in which the individual lived immediately before being remanded in custody,
  - (d) an analysis of the length of time that individuals spent within the remand population,
  - (e) the number of bail orders made by reference to the offence (or type of offence) in respect of which the individual was granted bail,
  - (f) the number of convictions for—
    - (i) bail-related offences, and
    - (ii) other offences (“subsequent offences”) committed while on bail by reference to the subsequent offence (or type of subsequent offence) in respect of which the individual was convicted.
- (3) The report may—
- (a) include any other information that the Scottish Ministers consider appropriate, and
  - (b) be in any form that they consider appropriate and, in particular, may be part of another document.
- (4) In this section—
- “bail-related offence” means an offence under section 27(1)(a) or (b) or (7) of the 1995 Act,
- “remand population” means the Scottish prison population comprising—
- (a) every individual who was accused of, or charged with, an offence and remanded in custody while awaiting trial, and
  - (b) every individual who was convicted of an offence and remanded in custody while awaiting sentence,
- “reporting period” means the period of 3 years beginning with the day on which section 2 comes into force.>

## Section 6

### **Russell Findlay**

**68** In section 6, page 5, leave out line 22

### **Russell Findlay**

**69** In section 6, page 5, leave out lines 26 to 28

## After section 6

### Russell Findlay

70 After section 6, insert—

#### <Release of short-term prisoners

- (1) The 1993 Act is amended as follows.
- (2) In section 1 (release of short-term, long-term and life prisoners), in subsection (1), for “the Secretary of State shall, without prejudice to any supervised release order to which the prisoner is subject, release him unconditionally” substitute “the Scottish Ministers must release the prisoner on licence if recommended to do so by the Parole Board”.>

### Russell Findlay

71 After section 6, insert—

#### <Publication and review of prisoner days of release

- (1) The Scottish Ministers must, for each reporting period, publish—
  - (a) the distribution of days on which all prisoners were released,
  - (b) a review of whether services are still being provided by the persons set out in section 34A(2) of the Community Justice (Scotland) Act 2016 in order to ensure the effective release of prisoners on Thursdays.
- (2) For the purposes of this section, a reporting period is—
  - (a) the period ending one year after the day of Royal Assent,
  - (b) each subsequent period of one year.>

## Section 7

### Angela Constance

9 In section 7, page 6, line 10, at end insert—

<( ) subsection (7) is repealed,>

### Katy Clark

72 In section 7, page 6, leave out lines 14 to 18

### Katy Clark

73 In section 7, page 6, leave out lines 22 to 28

### Katy Clark

74 In section 7, page 6, line 22, leave out from <release> to <be> in line 24 and insert <direct the release of a prisoner by virtue of subsection (3)>

### Angela Constance

10 In section 7, page 6, line 23, leave out <(2)> and insert <(3)>

**Jamie Greene**

75 In section 7, page 6, line 25, at end insert—

<( ) protecting any specific victim or victims of the prisoner, or class of persons, to whom the prisoner may pose a risk on release in terms of the operating protocol under section 21A of this Act.>

**Katy Clark**

76 In section 7, page 6, line 36, leave out from beginning to <applies,> in line 37

**Katy Clark**

77 In section 7, page 6, leave out lines 38 to 40 and insert—

<( ) Subject to subsection (6)(a), the Parole Board may extend the release period specified by virtue of subsection (6)(b).>

**Katy Clark**

78 In section 7, page 7, leave out lines 1 to 4 and insert—

<( ) For the avoidance of doubt, nothing in this section requires the Parole Board to make a decision by a particular date about whether to direct the release of a prisoner on licence under this section.>

**Katy Clark**

79 In section 7, page 7, leave out lines 5 to 12

**Jamie Greene**

80 In section 7, page 7, line 12, at end insert—

<( ) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.>

**Katy Clark**

81 In section 7, page 7, leave out lines 20 and 21

**Katy Clark**

82 In section 7, page 7, line 30, leave out from beginning to <3AB(3),> in line 1 on page 8

**Katy Clark**

83 In section 7, page 8, leave out lines 4 to 11

**Katy Clark**

84 In section 7, page 8, line 14, leave out <or 3AB(1)>

**Katy Clark**

85 In section 7, page 8, leave out lines 19 to 22

**Katy Clark**

86 In section 7, page 8, leave out lines 27 and 28

**Katy Clark**

87 In section 7, page 8, line 32, leave out <(1) or, as the case may be,>

**Katy Clark**

88 In section 7, page 8, leave out lines 36 to 40

**Jamie Greene**

89 Leave out section 7

**After section 7**

**Angela Constance**

11 After section 7, insert—

**<Review of recommendations and directions by Parole Board**

(1) The 1993 Act is amended as follows.

(2) In section 17 (revocation of licence), after subsection (2) insert—

5 “(2A) Subsection (2B) applies where the Scottish Ministers, having released a long-term prisoner on licence under section 3AB(3), revoke the licence and recall the prisoner to prison under subsection (1) or revoke the licence under subsection (1A).

10 (2B) The Parole Board may, whether when considering the prisoner’s case on a referral under subsection (3) or otherwise, review its recommendation that the prisoner be released on licence on having served one half of the prisoner’s sentence.”.

(3) In section 17A (recall of prisoners released under section 3AA or 3AB(1))—

(a) after subsection (2A) insert—

15 “(2B) Subsection (2C) applies where—

(a) the Scottish Ministers release a long-term prisoner on licence under section 3AB(1),

(b) the Parole Board subsequently recommends that the prisoner be released on licence on having served one half of the prisoner’s sentence, and

20 (c) the Scottish Ministers revoke the licence under section 3AB(1) and recall the prisoner to prison under subsection (1).

(2C) The Parole Board may, whether or not the case is referred to it under subsection (3), review its recommendation that the prisoner be released on licence on having served one half of the prisoner’s sentence.”.

25 (b) in subsection (3), for “such representations” substitute “representations under  
subsection (2)”.

(4) After section 17A insert—

**“17B Review by Parole Board of decision to recommend or direct release on licence**

(1) This section applies where—

30 (a) the Parole Board recommends or directs that a prisoner be released on  
licence under this Part, and

(b) the prisoner has not yet been released on licence as a result of the Board’s  
recommendation or, as the case may be, direction.

(2) The Parole Board may, if subsection (3) applies, review its recommendation or,  
as the case may be, direction that the prisoner be released on licence.

35 (3) This subsection applies if information comes to the Parole Board’s attention—

(a) that was not available to the Board when it made its recommendation or,  
as the case may be, direction, and

(b) which, in the opinion of Board, has a significant bearing on the prisoner’s  
suitability for release on licence.”.>

**Katy Clark**

11A As an amendment to amendment 11, leave out lines 12 to 25

**Section 8**

**Rona Mackay**

90 In section 8, page 9, line 34, at end insert—

<( ) A person is not to be released from prison by virtue of regulations under this section  
more than 180 days earlier than the Scottish Ministers would otherwise be required  
to release the person.>

**Angela Constance**

12 In section 8, page 9, line 39, after “harm” insert <—

(i)>

**Angela Constance**

13 In section 8, page 9, line 40, at end insert <, or

(ii) to an identified group of people.>

**Rona Mackay**

91 In section 8, page 10, line 18, leave out <or>

**Rona Mackay**

92 In section 8, page 10, line 19, at end insert—

<( ) under section 7(1) or 17(1) of the Domestic Abuse (Protection) (Scotland) Act 2021,>

**Jamie Greene**

- 93 In section 8, page 11, line 16, leave out from <unless> to <3C> in line 4 on page 12

**Rona Mackay**

- 94 In section 8, page 11, leave out lines 19 to 21

**Katy Clark**

**Supported by: Jamie Greene, Collette Stevenson**

- 38 Leave out section 8

**Section 9**

**Russell Findlay**

- 95 In section 9, page 13, line 23, at end insert—

<( ) victim support services.>

**Katy Clark**

- 39 In section 9, page 13, line 27, after <bodies> insert <, victims of crime, and organisations involved in providing support and advocacy for victims of crime>

**Russell Findlay**

- 96 In section 9, page 13, line 38, after <community> insert <(this provision does not apply to relevant individuals falling under paragraph (c) of this subsection)>

**Russell Findlay**

- 97 In section 9, page 14, line 6, after <institution.> insert—

<(c) is a victim of someone convicted of offences and sentenced to imprisonment or detention in a penal institution.>

**Russell Findlay**

- 98 In section 9, page 14, line 6, after <institution.> insert—

<“victim support services” should be construed in accordance with section 16ZA of the Criminal Justice (Scotland) Act 2003.>

**Katy Clark**

- 40\* In section 9, page 14, line 6, after <institution.> insert—

<( ) Within one year of this section coming into force, the Scottish Ministers must—

- (a) publish guidance and standards applicable to the development of release planning in Scotland, and

- (b) carry out a public consultation on the guidance and standards published under paragraph (a).>

**Jamie Greene**

99 In section 9, page 14, line 6, after <institution.> insert—

- <( ) The Scottish Ministers must, no later than three years after this section comes into force, publish guidance and standards applicable to the development of release planning in Scotland and must publicly consult on this guidance and standards.>

**After section 9**

**Katy Clark**

41 After section 9, insert—

**<Review of release planning for women**

- (1) Within 2 years of section 9 coming into force, the Scottish Ministers must carry out a review of release planning in respect of women in custody.
- (2) The review under subsection (1) must consider whether any specific issues arise in respect of release planning for women, including in relation to—
  - (a) caring responsibilities,
  - (b) health issues,
  - (c) offending histories.
- (3) As soon as practical after the review has concluded, the Scottish Ministers must publish a report on the findings.>

**Douglas Lumsden**

100 After section 9, insert—

**Post-custody outreach service**

- (1) The 2016 Act is amended as follows.
- (2) After section 34A, as inserted by section 9, insert—

*“Post-custody outreach service*

**34AA Post-custody outreach service**

- (1) The Scottish Ministers must establish a post-custody outreach service for relevant individuals.
- (2) In establishing the service, the Scottish Ministers must consult—
  - (a) Community Justice Scotland,
  - (b) each local authority,
  - (c) each health board.
- (3) The post-custody outreach service must provide—
  - (a) a point of contact for each relevant individual released from custody who has at some point spent time detained in hospital,



- (b) regular contact with each relevant individual released from custody who has at some point spent time detained in hospital, including immediate contact upon their release,
  - (c) any further service which the Scottish Ministers set out in regulations.
- (4) The post-custody outreach service must provide this service to relevant individuals for one year after their release.
- (5) In this section, “relevant individual” means an individual who has been—
- (a) remanded in custody, or
  - (b) convicted of offences and sentenced to imprisonment or detention in a penal institution.
- (6) Regulations under subsection (3)(c) are subject to the affirmative procedure.”.>

## Section 10

### **Douglas Lumsden**

- 101** In section 10, page 14, line 9, leave out <34A, as inserted by section 9> and insert <34AA, as inserted by section (*Post-custody outreach service*)>

### **Katy Clark**

**Supported by: Liam McArthur**

- 42** In section 10, page 14, line 21, after <Ministers> insert <must carry out a public consultation, and in particular>

### **Angela Constance**

- 14** In section 10, page 14, line 27, at end insert—  
<( ) the Risk Management Authority,>

### **Angela Constance**

- 15** In section 10, page 14, line 27, at end insert—  
<( ) Social Care and Social Work Improvement Scotland,>

### **Angela Constance**

- 16** In section 10, page 14, line 30, after “bodies” insert <—  
(i)>

### **Angela Constance**

- 17** In section 10, page 14, line 31, at end insert—  
<(ii) involved in or carrying out work related to the provision of support to children and families affected by imprisonment,>

**Angela Constance**

18 In section 10, page 14, line 31, at end insert—

<(ga) a 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,>

**Katy Clark**

**Supported by: Liam McArthur**

43 In section 10, page 14, line 31, at end insert—

<( ) victims of crime and organisations involved in providing support and advocacy for victims of crime,>

**Angela Constance**

19 In section 10, page 14, line 38, at end insert—

<“support services”—

- (a) means any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim, and
- (b) includes—
  - (i) providing the victim with information (including information provided under section 16ZA(3) of the Criminal Justice (Scotland) Act 2003),
  - (ii) assisting the victim with safety planning,
  - (iii) assisting the victim with the making of representations under Part 2 of the Criminal Justice (Scotland) Act 2003,>

**Angela Constance**

20 In section 10, page 15, line 18, at end insert—

<(8) The Scottish Ministers may by regulations modify the definition of “support services” in subsection (6).

(9) Regulations under subsection (4)(ga)(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 (4)(ga)(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.>

**Katy Clark**

3 In section 10, page 15, line 31, after <procedure.> insert—

**<34D Throughcare support: duty to report**

- (1) The Scottish Ministers must, as soon as practicable after the end of the reporting period, prepare a report on the operation of section 34C during the reporting period.
- (2) The report must, in particular, include information on—
  - (a) the impact of section 34C on the persons listed in subsection (2)(a) to (d) of that section,
  - (b) whether the persons have adequate resources to comply with the standards published under section 34B, and
  - (c) where further resources are required, what action is being taken to address this.
- (3) In preparing a report under subsection (1), the Scottish Ministers must consult—
  - (a) the persons listed in section 34C(2)(a) to (d),
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (4) The reporting period is the period of 1 year beginning with the day on which section 34C comes into force.
- (5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.>

**Katy Clark**

**Supported by: Liam McArthur**

44\* In section 10, page 15, line 31, after <procedure.> insert—

**<34E Throughcare support and access to services on remand**

The Scottish Ministers must take steps to ensure that individuals remanded in custody, from the start of their period in custody, receive—

- (a) throughcare support (as defined in section 34B(6)),
- (b) access to—
  - (i) educational opportunities,
  - (ii) training,
  - (iii) cultural and recreational activities,
  - (iv) consideration for meaningful work.>

## Section 11

**Katy Clark**

45 In section 11, page 16, leave out lines 8 to 10

**Russell Findlay**

102 In section 11, page 16, line 8, after <Ministers> insert <, with the explicit permission of the victim,>

### Angela Constance

- 21 In section 11, page 16, line 9, leave out from <supporter> to end of line 10 and insert <victim consents to the supporter being given the information.>

### Angela Constance

- 22 In section 11, page 16, line 28, leave out <section 17(1)> and insert <this Part>

### Angela Constance

- 23 In section 11, page 16, line 40, at end insert—

<( ) After section 16C (information to be given under section 16A) insert—

**“16D Provision of information concerning offender subject to compulsion order to person supporting victim**

- (1) This section applies where—
  - (a) a person entitled to ask to be given information under section 16A (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to be given, as well as or instead of the victim, the information described in section 16C about the person referred to in section 16A as O, or
  - (b) a supporter intimates to the Scottish Ministers that they wish to be given that information and Ministers are satisfied that the victim consents to the supporter being given the information.
- (2) This subsection applies to a person—
  - (a) of a description prescribed by the Scottish Ministers by regulations, and
  - (b) who is providing support services to the victim in relation to the offence in respect of which O has been made subject to a compulsion order and a restriction order.
- (3) The Scottish Ministers must give the information about O described in section 16C to the supporter.
- (4) But the Scottish Ministers—
  - (a) need not give the supporter information under this section if they consider there to be exceptional circumstances which make it inappropriate to do so,
  - (b) are not to give the supporter information about the terms of a condition in accordance with section 16C(2)(h) unless the condition is relevant to the victim as described in section 18A(3).
- (5) Subsection (3) does not apply where O has not attained the age of 16 years.
- (6) If the compulsion order or restriction order to which O has been made subject is revoked, subsection (3) ceases to apply when the Scottish Ministers give the victim or, as the case may be, the supporter the information that—
  - (a) the order has been revoked, and
  - (b) the decision to revoke it is final.
- (7) In this section, “support services” has the same meaning as in section 16ZA(5).

- (8) Regulations under subsection (2)(a)—
- (a) may—
    - (i) include incidental, supplementary, consequential, transitional, transitory or saving provision,
    - (ii) modify enactments (including this Act),
  - (b) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (c) are otherwise subject to the negative procedure.”.>

**Katy Clark**

- 46 In section 11, page 17, line 6, leave out <entitled> and insert <authorised by the victim>

**Katy Clark**

- 47 In section 11, page 17, leave out line 10

**Russell Findlay**

- 103 In section 11, page 17, line 10, after <intimates> insert <, with the explicit permission of the victim,>

**Angela Constance**

- 24 In section 11, page 17, line 10, after <informed> insert <and the Scottish Ministers are satisfied that the victim consents to the supporter being so informed>

**Angela Constance**

- 25 In section 11, page 17, line 37, at end insert—

<( ) After section 17D (right to information after section 17B decision) insert—

**“17DA Section 17B decision: provision of information to person supporting victim**

- (1) This section applies where—
  - (a) a person entitled to receive information under section 17D (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to receive, as well as or instead of the victim, the information, or
  - (b) a supporter intimates to the Scottish Ministers that they wish to receive that information and Ministers are satisfied that the victim consents to the supporter receiving the information.
- (2) This subsection applies to a person—
  - (a) of a description prescribed by the Scottish Ministers by regulations, and
  - (b) who is providing support services to the victim in relation to the offence in respect of which the person referred to in section 17B as O has been made subject to—
    - (i) a hospital direction,
    - (ii) a transfer for treatment direction, or, as the case may be,

- (iii) a compulsion order and a restriction order.
- (3) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, inform the supporter that the decision under section 17B has been taken.
- (4) Subsection (5) applies where—
  - (a) in accordance with subsection (3), the Scottish Ministers have informed the supporter that the Tribunal has decided to make an order revoking a compulsion order or restriction order, and
  - (b) by virtue of section 196 of the Mental Health Act, the Tribunal's order does not have effect because the Court of Session has made an order under section 323(1) of that Act.
- (5) The Scottish Ministers must—
  - (a) inform the supporter that the Court of Session has made an order under section 323(1) of the Mental Health Act, and
  - (b) give the supporter the information that they would have had to give the supporter by virtue of section 16C(4) had the Court not made that order.
- (6) In this section, “support services” has the same meaning as in section 16ZA(5).
- (7) Regulations under subsection (2)(a)—
  - (a) may—
    - (i) include incidental, supplementary, consequential, transitional, transitory or saving provision,
    - (ii) modify enactments (including this Act),
  - (b) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (c) are otherwise subject to the negative procedure.”>

### **Angela Constance**

**26** In section 11, page 17, line 37, at end insert—

- <( ) In section 17E (information sharing in respect of mentally-disordered offenders)—
- (a) in subsection (1)—
    - (i) for “or 16A” substitute “, 16ZA, 16A or 16D”,
    - (ii) after “(“V”)” insert “or, as the case may be, a supporter”,
  - (b) in subsection (3), after “17D” insert “or to a supporter under section 16ZA, 16D or 17DA”,
  - (c) in subsection (5), for “or 16A” substitute “16ZA, 16A or, as the case may be, 16D”,
  - (d) after subsection (5) insert—
    - “(6) In this section, “supporter” is to be construed in accordance with section 16ZA, 16D or, as the case may be, 17DA.”.

- ( ) In section 18A (interpretation)—
  - (a) in subsection (3)—
    - (i) after “16A(3)(b)” insert “, 16D(4)(b)”,
    - (ii) in paragraph (b), after “V” insert “or, as the case may be, a supporter”,
  - (b) after subsection (4) insert—
    - “(5) In this section, “supporter” is to be construed in accordance with section 16D or, as the case may be, 17DA.”.
- ( ) In section 18B (power to modify Part)—
  - (a) in subsection (1)(a), for “16A and 16B,” substitute “16ZA, 16A, 16B, 16D(5) and 17ZA(4),”,
  - (b) in subsection (2)(a), for “section 16A” substitute “sections 16A and 16D”,
  - (c) in subsection (3), after “16A” in both places insert “, 16D”.>

**Angela Constance**

- 27 In section 11, page 17, line 39, after <16ZA(2)(a)> insert <, 16D(2)(a), 17DA(2)(a)>

**Katy Clark**

- 48 In section 11, page 18, leave out lines 8 to 10

**Russell Findlay**

- 104 In section 11, page 18, line 8, after <Ministers> insert <, with the explicit permission of the victim,>

**Angela Constance**

- 105 In section 11, page 18, line 9, leave out from <the> to end of line 10 and insert <V consents to the supporter being given the information>

**After section 11**

**Katy Clark**

- 4 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 1 year 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.>

**Before section 12**

**Katy Clark**

5 Before section 12, insert—

**<Report on operation of Act**

- (1) The Scottish Ministers must, as soon as practicable after the end of the reporting period, prepare a report on the operation of this Act during the reporting period.
- (2) The report must, in particular, include information on the impact on resources of—
  - (a) section 1 on local authorities,
  - (b) section 10 on the persons listed in section 34C(2) of the 2016 Act.
- (3) The reporting period is the period of 1 year beginning with the day after Royal Assent.
- (4) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.>



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