



# Bail Act 1976

## 1976 CHAPTER 63

### *Supplementary*

#### **5 Supplementary provisions about decisions on bail.**

- (1) Subject to subsection (2) below, where—
- (a) a court or constable grants bail in criminal proceedings, or
  - (b) a court withholds bail in criminal proceedings from a person to whom section 4 of this act applies, or
  - (c) a court, officer of a court or constable appoints a time or place or a court or officer of a court appoints a different time or place for a person granted bail in criminal proceedings to surrender to custody, or
  - (d) a court [<sup>F1</sup>or constable]varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

that court, officer or constable shall make a record of the decision in the prescribed manner and containing the prescribed particulars and, if requested to do so by the person in relation to whom the decision was taken, shall cause him to be given a copy of the record of the decision as soon as practicable after the record is made.

- (2) Where bail in criminal proceedings is granted by endorsing a warrant of arrest for bail the constable who releases on bail the person arrested shall make the record required by subsection (1) above instead of the judge or justice who issued the warrant.
- (3) Where a magistrates' court or the Crown Court—
- (a) withholds bail in criminal proceedings, or
  - (b) imposes conditions in granting bail in criminal proceedings, or
  - (c) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

and does so in relation to a person to whom section 4 of this Act applies, then the court shall, with a view to enabling him to consider making an application in the matter to another court, give reasons for withholding bail or for imposing or varying the conditions.

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- (4) A court which is by virtue of subsection (3) above required to give reasons for its decision shall include a note of those reasons in the record of its decision and shall (except in a case where, by virtue of subsection (5) below, this need not be done) give a copy of that note to the person in relation to whom the decision was taken.
- (5) The Crown Court need not give a copy of the note of the reasons for its decision to the person in relation to whom the decision was taken where that person is represented by counsel or a solicitor unless his counsel or solicitor requests the court to do so.
- (6) Where a magistrates' court withholds bail in criminal proceedings from a person who is not represented by counsel or a solicitor, the court shall—
- (a) if it is committing him for trial to the Crown Court [<sup>F2</sup>or if it issues a certificate under subsection (6A) below], inform him that he may apply to the High Court or to the Crown Court to be granted bail;
  - (b) in any other case, inform him that he may apply to the High Court for that purpose.
- [<sup>F3</sup>(6A) Where in criminal proceedings—
- (a) a magistrates' court remands a person in custody under [<sup>F4</sup>section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination) or] any of the following provisions of the Magistrates' Courts Act 1980—
    - (i) section 5 (adjournment of inquiry into offence);
    - (ii) section 10 (adjournment of trial); [<sup>F5</sup>or]
 

[ section 18 (initial procedure on information against adult for offence <sup>F6</sup>(iii) triable either way),]

after hearing full argument on an application for bail from him; and
  - (b) either—
    - (i) it has not previously heard such argument on an application for bail from him in those proceedings; or
    - (ii) it has previously heard full argument from him on such an application but it is satisfied that there has been a change in his circumstances or that new considerations have been placed before it,

it shall be the duty of the court to issue a certificate in the prescribed form that they heard full argument on his application for bail before they refused the application.
- (6B) Where the court issues a certificate under subsection (6A) above in a case to which paragraph (b)(ii) of that subsection applies, it shall state in the certificate the nature of the change of circumstances or the new considerations which caused it to hear a further fully argued bail application.
- (6C) Where a court issues a certificate under subsection (6A) above it shall cause the person to whom it refuses bail to be given a copy of the certificate.]
- (7) Where a person has given security in pursuance of section 3(5) above and a court is satisfied that he failed to surrender to custody then, unless it appears that he had reasonable cause for his failure, the court may order the forfeiture of the security.
- (8) If a court orders the forfeiture of a security under subsection (7) above, the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

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- [<sup>F7</sup>(8A) An order under subsection (7) above shall, unless previously revoked, have effect at the end of twenty-one days beginning with the day on which it is made.
- (8B) A court which has ordered the forfeiture of a security under subsection (7) above may, if satisfied on an application made by or on behalf of the person who gave it that he did after all have reasonable cause for his failure to surrender to custody, by order remit the forfeiture or declare that it extends to such amount less than the full value of the security as it thinks fit to order.
- (8C) An application under subsection (8B) above may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that the prosecution was given reasonable notice of the applicant's intention to make it.]
- (9) A security which has been ordered to be forfeited by a court under subsection (7) above shall, to the extent of the forfeiture—
- (a) if it consists of money, be accounted for and paid in the same manner as a fine imposed by that court would be;
  - (b) if it does not consist of money, be enforced by such magistrates' court as may be specified in the order.
- [<sup>F8</sup>(9A) Where an order is made under subsection (8B) above after the order for forfeiture of the security in question has taken effect, any money which would have fallen to be repaid or paid over to the person who gave the security if the order under subsection (8B) had been made before the order for forfeiture took effect shall be repaid or paid over to him.]
- (10) In this section “prescribed” means, in relation to the decision of a court or an officer of a court, prescribed by Supreme Court rules, Courts-Martial Appeal rules, Crown Court rules or magistrates' courts rules, as the case requires or, in relation to a decision of a constable, prescribed by direction of the Secretary of State.
- [<sup>F9</sup>(11) This section is subject, in its application to bail granted by a constable, to section 5A of this Act.]

#### Textual Amendments

- F1** Words in s. 5(1)(d) inserted (10.4.1995) by 1994 c. 33, s. 27(4), **Sch. 3 para. 1(a)**; S.I. 1995/721, art. 2, **Sch.**
- F2** Words inserted as provided by **Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 60(2)(3)**
- F3** S. 5(6A)–(6C) inserted by **Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 60(2)(3)**
- F4** Words in s. 5(6A)(a) inserted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 53(a)**
- F5** Word in s. 5(6A)(a)(ii) inserted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 53(b)**
- F6** S. 5(6A)(a)(iii) substituted (25.8.2000) for s. 5(6A)(a)(iii)(iv) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 53(c)**
- F7** S. 5(8A)–(8C) inserted by **Criminal Law Act 1977 (c. 45), Sch. 12**
- F8** S. 5(9A) inserted by **Criminal Law Act 1977 (c. 45), Sch. 12**
- F9** S. 5(11) inserted (10.4.1995) by 1994 c. 33, s. 27(4), **Sch. 3 para. 1(b)**; S.I. 1995/721, art. 2, **Sch.**

#### [<sup>F10</sup>5A **Supplementary provisions in cases of police bail.**

- (1) Section 5 of this Act applies, in relation to bail granted by a custody officer under Part IV of the Police and Criminal Evidence Act 1984 in cases where the normal powers to impose conditions of bail are available to him, subject to the following modifications.

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(2) For subsection (3) substitute the following—

(“) Where a custody officer, in relation to any person,—

- (a) imposes conditions in granting bail in criminal proceedings, or
- (b) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

the custody officer shall, with a view to enabling that person to consider requesting him or another custody officer, or making an application to a magistrates' court, to vary the conditions, give reasons for imposing or varying the conditions.”.

(3) For subsection (4) substitute the following—

(“) A custody officer who is by virtue of subsection (3) above required to give reasons for his decision shall include a note of those reasons in the custody record and shall give a copy of that note to the person in relation to whom the decision was taken.”.

(4) Subsections (5) and (6) shall be omitted.]

#### Textual Amendments

**F10** S. 5A inserted (10.4.1995) by 1994 c. 33, s. 27(4), Sch. 3 para.2; S.I. 1995/721, art. 2, Sch.

#### [5B Reconsideration of decisions granting bail.

(1) Where a magistrates' court has granted bail in criminal proceedings in connection with an offence, or proceedings for an offence, to which this section applies or a constable has granted bail in criminal proceedings in connection with proceedings for such an offence, that court or the appropriate court in relation to the constable may, on application by the prosecutor for the decision to be reconsidered,—

- (a) vary the conditions of bail,
- (b) impose conditions in respect of bail which has been granted unconditionally, or
- (c) withhold bail.

(2) The offences to which this section applies are offences triable on indictment and offences triable either way.

(3) No application for the reconsideration of a decision under this section shall be made unless it is based on information which was not available to the court or constable when the decision was taken.

(4) Whether or not the person to whom the application relates appears before it, the magistrates' court shall take the decision in accordance with section 4(1) (and Schedule 1) of this Act.

(5) Where the decision of the court on a reconsideration under this section is to withhold bail from the person to whom it was originally granted the court shall—

- (a) if that person is before the court, remand him in custody, and
- (b) if that person is not before the court, order him to surrender himself forthwith into the custody of the court.

(6) Where a person surrenders himself into the custody of the court in compliance with an order under subsection (5) above, the court shall remand him in custody.

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- (7) A person who has been ordered to surrender to custody under subsection (5) above may be arrested without warrant by a constable if he fails without reasonable cause to surrender to custody in accordance with the order.
- (8) A person arrested in pursuance of subsection (7) above shall be brought as soon as practicable, and in any event within 24 hours after his arrest, before a justice of the peace for the petty sessions area in which he was arrested and the justice shall remand him in custody.
- In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.
- (9) Magistrates' court rules shall include provision—
- (a) requiring notice of an application under this section and of the grounds for it to be given to the person affected, including notice of the powers available to the court under it;
  - (b) for securing that any representations made by the person affected (whether in writing or orally) are considered by the court before making its decision; and
  - (c) designating the court which is the appropriate court in relation to the decision of any constable to grant bail.]

#### Extent Information

E1 S. 5B inserted (10.4.1995) by 1994 c. 33, s.30; S.I. 1995/721, art. 2, Sch.

## 6 Offence of absconding by person released on bail.

- (1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.
- (2) If a person who—
- (a) has been released on bail in criminal proceedings, and
  - (b) having reasonable cause therefor, has failed to surrender to custody,
- fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.
- (3) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.
- (4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.
- (5) An offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.
- (6) Where a magistrates' court convicts a person of an offence under subsection (1) or (2) above the court may, if it thinks—
- (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict, or
  - (b) in a case where it commits that person for trial to the Crown Court for another offence, that it would be appropriate for him to be dealt with for the offence

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under subsection (1) or (2) above by the court before which he is tried for the other offence,

commit him in custody or on bail to the Crown Court for sentence.

- (7) A person who is convicted summarily of an offence under subsection (1) or (2) above and is not committed to the Crown Court for sentence shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding [<sup>F11</sup>level 5 on the standard scale] or to both and a person who is so committed for sentence or is dealt with as for such a contempt shall be liable to imprisonment for a term not exceeding 12 months or to a fine or to both.
- (8) In any proceedings for an offence under subsection (1) or (2) above a document purporting to be a copy of the part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender to custody.
- (9) For the purposes of subsection (8) above—
- (a) “the prescribed record” means the record of the decision of the court, officer or constable made in pursuance of section 5(1) of this Act;
  - (b) the copy of the prescribed record is duly certified if it is certified by the appropriate officer of the court or, as the case may be, by the constable who took the decision or a constable designated for the purpose by the officer in charge of the police station from which the person to whom the record relates was released;
  - (c) “the appropriate officer” of the court is—
    - (i) in the case of a magistrates’ court, the justices’ clerk or such other officer as may be authorised by him to act for the purpose;
    - (ii) in the case of the Crown Court, such officer as may be designated for the purpose in accordance with arrangements made by the Lord Chancellor;
    - (iii) in the case of the High Court, such officer as may be designated for the purpose in accordance with arrangements made by the Lord Chancellor;
    - (iv) in the case of the Court of Appeal, the registrar of criminal appeals or such other officer as may be authorised by him to act for the purpose;
    - (v) in the case of the Courts-Martial Appeal Court, the registrar or such other officer as may be authorised by him to act for the purpose.

#### Extent Information

**E2** For extent of s. 1 see [s. 13\(3\)](#)

#### Textual Amendments

**F11** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#), (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#) and (N.I.) by [S.I. 1984/703 \(N.I. 3\)](#), [arts. 5, 6](#)

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## 7 Liability to arrest for absconding or breaking conditions of bail.

- (1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for him to do so the court may issue a warrant for his arrest.
- (2) If a person who has been released on bail in criminal proceedings absents himself from the court at any time after he has surrendered into the custody of the court and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest; but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by or on behalf of the court.
- (3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court may be arrested without warrant by a constable—
  - (a) if the constable has reasonable grounds for believing that that person is not likely to surrender to custody;
  - (b) if the constable has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or
  - (c) in a case where that person was released on bail with one or more surety or sureties, if a surety notifies a constable in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.
- (4) a person arrested in pursuance of subsection (3) above—
  - (a) shall, except where he was arrested within 24 hours of the time appointed for him to surrender to custody, be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area in which he was arrested; and
  - (b) in the said excepted case shall be brought before the court at which he was to have surrendered to custody.

[<sup>F12</sup>In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.]
- (5) A justice of the peace before whom a person is brought under subsection (4) above may, subject to subsection (6) below, if of the opinion that that person—
  - (a) is not likely to surrender to custody, or
  - (b) has broken or is likely to break any condition of his bail,remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions, but if not of that opinion shall grant him bail subject to the same conditions (if any) as were originally imposed.
- (6) Where the person so brought before the justice is a child or young person and the justice does not grant him bail, subsection (5) above shall have effect subject to the provisions of section 23 of the <sup>M1</sup>Children and Young Persons Act 1969 (remands to the care of local authorities).

### Textual Amendments

**F12** Words inserted by [Criminal Law Act 1977 \(c. 45\)](#), [Sch. 12](#)

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### Marginal Citations

M1 1969 c. 54.

## 8 Bail with sureties.

- (1) This section applies where a person is granted bail in criminal proceedings on condition that he provides one or more surety or sureties for the purpose of securing that he surrenders to custody.
- (2) In considering the suitability for that purpose of a proposed surety, regard may be had (amongst other things) to—
  - (a) the surety's financial resources;
  - (b) his character and any previous convictions of his; and
  - (c) his proximity (whether in point of kinship, place of residence or otherwise) to the person for whom he is to be surety.
- (3) Where a court grants a person bail in criminal proceedings on such a condition but is unable to release him because no surety or no suitable surety is available, the court shall fix the amount in which the surety is to be bound and subsections (4) and (5) below, or in a case where the proposed surety resides in Scotland subsection (6) below, shall apply for the purpose of enabling the recognizance of the surety to be entered into subsequently.
- (4) Where this subsection applies the recognizance of the surety may be entered into before such of the following persons or descriptions of persons as the court may by order specify or, if it makes no such order, before any of the following persons, that is to say—
  - (a) where the decision is taken by a magistrates' court, before a justice of the peace, a justices' clerk or a police officer who either is of the rank of inspector or above or is in charge of a police station or, if magistrates' courts rules so provide, by a person of such other description as is specified in the rules;
  - (b) where the decision is taken by the Crown Court, before any of the persons specified in paragraph (a) above or, if Crown Court rules so provide, by a person of such other description as is specified in the rules;
  - (c) where the decision is taken by the High Court or the Court of Appeal, before any of the persons specified in paragraph (a) above or, if Supreme Court rules so provide, by a person of such other description as is specified in the rules;
  - (d) where the decision is taken by the Courts-Martial Appeal Court, before any of the persons specified in paragraph (a) above or, if Courts-Martial Appeal rules so provide, by a person of such other description as is specified in the rules;
 and Supreme Court rules, Crown Court rules, Courts-Martial Appeal rules or magistrates' courts rules may also prescribe the manner in which a recognizance which is to be entered into before such a person is to be entered into and the persons by whom and the manner in which the recognizance may be enforced.
- (5) Where a surety seeks to enter into his recognizance before any person in accordance with subsection (4) above but that person declines to take his recognizance because he is not satisfied of the surety's suitability, the surety may apply to—
  - (a) the court which fixed the amount of the recognizance in which the surety was to be bound, or
  - (b) a magistrates' court for the petty sessions area in which he resides,



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for that court to take his recognizance and that court shall, if satisfied of his suitability, take his recognizance.

- (6) Where this subsection applies, the court, if satisfied of the suitability of the proposed surety, may direct that arrangements be made for the recognizance of the surety to be entered into in Scotland before any constable, within the meaning of the <sup>M2</sup>Police (Scotland) Act 1967, having charge at any police office or station in like manner as the recognizance would be entered into in England or Wales.
- (7) Where, in pursuance of subsection (4) or (6) above, a recognizance is entered into otherwise than before the court that fixed the amount of the recognizance, the same consequences shall follow as if it had been entered into before that court.

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**Marginal Citations**

**M2** 1967 c. 77.

**Status:**

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