



# Criminal Justice Act 2003

## 2003 CHAPTER 44

### PART 2

#### BAIL

#### 13 Grant and conditions of bail

- (1) In section 3(6) of the 1976 Act (which sets out cases where bail conditions may be imposed)—
  - (a) the words “to secure that” are omitted,
  - (b) the words “to secure that” are inserted at the beginning of each of paragraphs (a) to (e),
  - (c) after paragraph (c) there is inserted—
    - “(ca) for his own protection or, if he is a child or young person, for his own welfare or in his own interests,”
  - (d) for “or (c)” there is substituted “, (c) or (ca)”.
- (2) In section 3A(5) of the 1976 Act (no conditions may be imposed under section 3(4), (5), (6) or (7) unless necessary for certain purposes)—
  - (a) the words “for the purpose of preventing that person from” are omitted,
  - (b) the words “for the purpose of preventing that person from” are inserted at the beginning of each of paragraphs (a) to (c),
  - (c) after paragraph (c) there is inserted “or
  - (d) for that person’s own protection or, if he is a child or young person, for his own welfare or in his own interests.”
- (3) In paragraph 8(1) of Part 1 of Schedule 1 to the 1976 Act (no conditions may be imposed under section 3(4) to (7) unless necessary to do so for certain purposes) for the words from “that it is necessary to do so” onwards there is substituted “that it is necessary to do so—
  - (a) for the purpose of preventing the occurrence of any of the events mentioned in paragraph 2(1) of this Part of this Schedule, or

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- (b) for the defendant’s own protection or, if he is a child or young person, for his own welfare or in his own interests.”
- (4) For paragraph 5 of Part 2 of that Schedule (defendant need not be granted bail if having been released on bail he has been arrested in pursuance of section 7) there is substituted—

The defendant need not be granted bail if—

- (a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and
- (b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, commit an offence on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person).”

#### Commencement Information

**II** S. 13 wholly in force at 5.4.2004, see s. 336(3) and S.I. 2004/829, **art. 2(1)(2)** (subject to **art. 2(3)-(6)**)

## 14 Offences committed on bail

- (1) For paragraph 2A of Part 1 of Schedule 1 to the 1976 Act (defendant need not be granted bail where he was on bail on date of offence) there is substituted—

“2A (1) If the defendant falls within this paragraph he may not be granted bail unless the court is satisfied that there is no significant risk of his committing an offence while on bail (whether subject to conditions or not).

(2) The defendant falls within this paragraph if—

- (a) he is aged 18 or over, and
- (b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.”

- (2) After paragraph 9 of that Part there is inserted—

“9AA (1) This paragraph applies if—

- (a) the defendant is under the age of 18, and
- (b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.

- (2) In deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the court shall give particular weight to the fact that the defendant was on bail in criminal proceedings on the date of the offence.”

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#### Commencement Information

- I2** S. 14 partly in force; s. 14 not in force at Royal Assent, see s. 336(3); s. 14 in force for certain purposes at 1.1.2007 by S.I. 2006/3217, art. 2 (subject to art. 3)

### 15 Absconding by persons released on bail

- (1) For paragraph 6 of Part 1 of Schedule 1 to the 1976 Act (defendant need not be granted bail if having been released on bail he has been arrested in pursuance of section 7) there is substituted—

- (1) If the defendant falls within this paragraph, he may not be granted bail unless the court is satisfied that there is no significant risk that, if released on bail (whether subject to conditions or not), he would fail to surrender to custody.
- (2) Subject to sub-paragraph (3) below, the defendant falls within this paragraph if—
  - (a) he is aged 18 or over, and
  - (b) it appears to the court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody.
- (3) Where it appears to the court that the defendant had reasonable cause for his failure to surrender to custody, he does not fall within this paragraph unless it also appears to the court that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.
- (4) For the purposes of sub-paragraph (3) above, a failure to give to the defendant a copy of the record of the decision to grant him bail shall not constitute a reasonable cause for his failure to surrender to custody.”

- (2) After paragraph 9AA of that Part (inserted by section 14(2)) there is inserted—

“9AB

- (1) Subject to sub-paragraph (2) below, this paragraph applies if—
  - (a) the defendant is under the age of 18, and
  - (b) it appears to the court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody.
- (2) Where it appears to the court that the defendant had reasonable cause for his failure to surrender to custody, this paragraph does not apply unless it also appears to the court that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.
- (3) In deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would fail to surrender to custody, the court shall give particular weight to—
  - (a) where the defendant did not have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody, or

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- (b) where he did have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.
- (4) For the purposes of this paragraph, a failure to give to the defendant a copy of the record of the decision to grant him bail shall not constitute a reasonable cause for his failure to surrender to custody.”
- (3) In section 6 of the 1976 Act (offence of absconding by person released on bail) after subsection (9) there is inserted—
  - “(10) Section 127 of the Magistrates' Courts Act 1980 shall not apply in relation to an offence under subsection (1) or (2) above.
  - (11) Where a person has been released on bail in criminal proceedings and that bail was granted by a constable, a magistrates' court shall not try that person for an offence under subsection (1) or (2) above in relation to that bail (the “relevant offence”) unless either or both of subsections (12) and (13) below applies.
  - (12) This subsection applies if an information is laid for the relevant offence within 6 months from the time of the commission of the relevant offence.
  - (13) This subsection applies if an information is laid for the relevant offence no later than 3 months from the time of the occurrence of the first of the events mentioned in subsection (14) below to occur after the commission of the relevant offence.
  - (14) Those events are—
    - (a) the person surrenders to custody at the appointed place;
    - (b) the person is arrested, or attends at a police station, in connection with the relevant offence or the offence for which he was granted bail;
    - (c) the person appears or is brought before a court in connection with the relevant offence or the offence for which he was granted bail.”

#### Commencement Information

**I3** S. 15 partly in force; s. 15 not in force at Royal Assent, see s. 336(3); s. 15(3) in force at 5.4.2004 by S.I. 2004/829, art. 2(1)(2) (subject to art. 2(3)-(6)); s. 15(1)(2) in force for certain purposes at 1.1.2007 by S.I. 2006/3217, art. 2 (subject to art. 3)

## 16 Appeal to Crown Court

- (1) This section applies where a magistrates' court grants bail to a person (“the person concerned”) on adjourning a case under—
  - (a) section 10 of the Magistrates' Courts Act 1980 (c. 43) (adjournment of trial),
  - (b) section 17C of that Act (intention as to plea: adjournment),
  - (c) section 18 of that Act (initial procedure on information against adult for offence triable either way),
  - (d) section 24C of that Act (intention as to plea by child or young person: adjournment),
  - (e) section 52(5) of the Crime and Disorder Act 1998 (c. 37) (adjournment of proceedings under section 51 etc), or

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- (f) section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (remand for medical examination).
- (2) Subject to the following provisions of this section, the person concerned may appeal to the Crown Court against any condition of bail falling within subsection (3).
- (3) A condition of bail falls within this subsection if it is a requirement—
  - (a) that the person concerned resides away from a particular place or area,
  - (b) that the person concerned resides at a particular place other than a bail hostel,
  - (c) for the provision of a surety or sureties or the giving of a security,
  - (d) that the person concerned remains indoors between certain hours,
  - (e) imposed under section 3(6ZAA) of the 1976 Act (requirements with respect to electronic monitoring), or
  - (f) that the person concerned makes no contact with another person.
- (4) An appeal under this section may not be brought unless subsection (5) or (6) applies.
- (5) This subsection applies if an application to the magistrates' court under section 3(8) (a) of the 1976 Act (application by or on behalf of person granted bail) was made and determined before the appeal was brought.
- (6) This subsection applies if an application to the magistrates' court—
  - (a) under section 3(8)(b) of the 1976 Act (application by constable or prosecutor), or
  - (b) under section 5B(1) of that Act (application by prosecutor),was made and determined before the appeal was brought.
- (7) On an appeal under this section the Crown Court may vary the conditions of bail.
- (8) Where the Crown Court determines an appeal under this section, the person concerned may not bring any further appeal under this section in respect of the conditions of bail unless an application or a further application to the magistrates' court under section 3(8)(a) of the 1976 Act is made and determined after the appeal.

#### **Commencement Information**

**I4** S. 16 wholly in force at 5.4.2004, see s. 336(3) and S.I. 2004/829, art. 2(1)(2) (subject to art. 2(3)-(6))

## **17 Appeals to High Court**

- (1) In section 22(1) of the Criminal Justice Act 1967 (c. 80) (extension of power of High Court to grant, or vary conditions of, bail)—
  - (a) after “Where” there is inserted “ (a) ”, and
  - (b) after “proceedings,” in the second place where it occurs, there is inserted “and (b) it does so where an application to the court to state a case for the opinion of the High Court is made.”.
- (2) The inherent power of the High Court to entertain an application in relation to bail where a magistrates' court—
  - (a) has granted or withheld bail, or
  - (b) has varied the conditions of bail,is abolished.

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- (3) The inherent power of the High Court to entertain an application in relation to bail where the Crown Court has determined—
- (a) an application under section 3(8) of the 1976 Act, or
  - (b) an application under section 81(1)(a), (b), (c) or (g) of the Supreme Court Act 1981 (c. 54),
- is abolished.
- (4) The High Court is to have no power to entertain an application in relation to bail where the Crown Court has determined an appeal under section 16 of this Act.
- (5) The High Court is to have no power to entertain an application in relation to bail where the Crown Court has granted or withheld bail under section 88 or 89 of this Act.
- (6) Nothing in this section affects—
- (a) any other power of the High Court to grant or withhold bail or to vary the conditions of bail, or
  - (b) any right of a person to apply for a writ of habeas corpus or any other prerogative remedy.
- (7) Any reference in this section to an application in relation to bail is to be read as including—
- (a) an application for bail to be granted,
  - (b) an application for bail to be withheld,
  - (c) an application for the conditions of bail to be varied.
- (8) Any reference in this section to the withholding of bail is to be read as including a reference to the revocation of bail.

#### Commencement Information

**I5** S. 17 wholly in force at 5.4.2004, see s. 336(3) and S.I. 2004/829, **art. 2(1)(2)** (subject to art. 2(3)-(6))

## 18 Appeal by prosecution

- (1) Section 1 of the Bail (Amendment) Act 1993 (c. 26) (prosecution right of appeal) is amended as follows.
- (2) For subsection (1) (prosecution may appeal to Crown Court judge against bail in case of offence punishable by imprisonment for five years or more etc) there is substituted—
- “(1) Where a magistrates' court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to a judge of the Crown Court against the granting of bail.”
- (3) In subsection (10)(a) for “punishable by a term of imprisonment” there is substituted “punishable by imprisonment”.

#### Commencement Information

**I6** S. 18 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 1 (subject to art. 2(2), Sch. 2)

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## 19 Drug users: restriction on bail

(1) The 1976 Act is amended as follows.

(2) In section 3 (general provisions), after subsection (6B) there is inserted—

“(6C) Subsection (6D) below applies where—

- (a) the court has been notified by the Secretary of State that arrangements for conducting a relevant assessment or, as the case may be, providing relevant follow-up have been made for the petty sessions area in which it appears to the court that the person referred to in subsection (6D) would reside if granted bail; and
- (b) the notice has not been withdrawn.

(6D) In the case of a person (“P”)—

- (a) in relation to whom paragraphs (a) to (c) of paragraph 6B(1) of Part 1 of Schedule 1 to this Act apply;
- (b) who, after analysis of the sample referred to in paragraph (b) of that paragraph, has been offered a relevant assessment or, if a relevant assessment has been carried out, has had relevant follow-up proposed to him; and
- (c) who has agreed to undergo the relevant assessment or, as the case may be, to participate in the relevant follow-up,

the court, if it grants bail, shall impose as a condition of bail that P both undergo the relevant assessment and participate in any relevant follow-up proposed to him or, if a relevant assessment has been carried out, that P participate in the relevant follow-up.

(6E) In subsections (6C) and (6D) above—

- (a) “relevant assessment” means an assessment conducted by a suitably qualified person of whether P is dependent upon or has a propensity to misuse any specified Class A drugs;
- (b) “relevant follow-up” means, in a case where the person who conducted the relevant assessment believes P to have such a dependency or propensity, such further assessment, and such assistance or treatment (or both) in connection with the dependency or propensity, as the person who conducted the relevant assessment (or conducts any later assessment) considers to be appropriate in P’s case,

and in paragraph (a) above “Class A drug” and “misuse” have the same meaning as in the Misuse of Drugs Act 1971, and “specified” (in relation to a Class A drug) has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

(6F) In subsection (6E)(a) above, “suitably qualified person” means a person who has such qualifications or experience as are from time to time specified by the Secretary of State for the purposes of this subsection.”

(3) In section 3A(3) (conditions of bail in case of police bail), for “, (6A) and (6B)” there is substituted “ and (6A) to (6F) ”.

(4) In Schedule 1 (which contains supplementary provisions about bail), in Part 1 (imprisonable offences)—

(a) after paragraph 6 there is inserted—

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**6A “Exception applicable to drug users in certain areas**

Subject to paragraph 6C below, a defendant who falls within paragraph 6B below may not be granted bail unless the court is satisfied that there is no significant risk of his committing an offence while on bail (whether subject to conditions or not).

**6B Exception applicable to drug users in certain areas**

(1) A defendant falls within this paragraph if—

- (a) he is aged 18 or over;
- (b) a sample taken—
  - (i) under section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs) in connection with the offence; or
  - (ii) under section 161 of the Criminal Justice Act 2003 (drug testing after conviction of an offence but before sentence),

has revealed the presence in his body of a specified Class A drug;

- (c) either the offence is one under section 5(2) or (3) of the Misuse of Drugs Act 1971 and relates to a specified Class A drug, or the court is satisfied that there are substantial grounds for believing—
  - (i) that misuse by him of any specified Class A drug caused or contributed to the offence; or
  - (ii) (even if it did not) that the offence was motivated wholly or partly by his intended misuse of such a drug; and
- (d) the condition set out in sub-paragraph (2) below is satisfied or (if the court is considering on a second or subsequent occasion whether or not to grant bail) has been, and continues to be, satisfied.

(2) The condition referred to is that after the taking and analysis of the sample—

- (a) a relevant assessment has been offered to the defendant but he does not agree to undergo it; or
- (b) he has undergone a relevant assessment, and relevant follow-up has been proposed to him, but he does not agree to participate in it.

(3) In this paragraph and paragraph 6C below—

- (a) “Class A drug” and “misuse” have the same meaning as in the Misuse of Drugs Act 1971;
- (b) “relevant assessment” and “relevant follow-up” have the meaning given by section 3(6E) of this Act;
- (c) “specified” (in relation to a Class A drug) has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.



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## 6C Exception applicable to drug users in certain areas

Paragraph 6A above does not apply unless—

- (a) the court has been notified by the Secretary of State that arrangements for conducting a relevant assessment or, as the case may be, providing relevant follow-up have been made for the petty sessions area in which it appears to the court that the defendant would reside if granted bail; and
  - (b) the notice has not been withdrawn.”
- (b) in paragraph 8(1), for “(4) to (7)” there is substituted “ (4) to (6B) or (7) ”.

### Commencement Information

**I7** S. 19 wholly in force at 5.4.2004, see s. 336(3) and S.I. 2004/829, art. 2(1)(2) (subject to art. 2(3)-(6))

## 20 Supplementary amendments to the Bail Act 1976

- (1) In Part 1 of Schedule 1 to the 1976 Act (supplementary provisions relating to bail of defendant accused or convicted of imprisonable offence) the existing text of paragraph 2 is to be sub-paragraph (1) of that paragraph, and after that sub-paragraph (as so re-numbered) there is inserted—

“(2) Where the defendant falls within one or more of paragraphs 2A, 6 and 6B of this Part of this Schedule, this paragraph shall not apply unless—

- (a) where the defendant falls within paragraph 2A, the court is satisfied as mentioned in sub-paragraph (1) of that paragraph;
- (b) where the defendant falls within paragraph 6, the court is satisfied as mentioned in sub-paragraph (1) of that paragraph;
- (c) where the defendant falls within paragraph 6B, the court is satisfied as mentioned in paragraph 6A of this Part of this Schedule or paragraph 6A does not apply by virtue of paragraph 6C of this Part of this Schedule.”

- (2) In paragraph 9 of that Part (matters to be taken into account in making decisions under paragraph 2 or 2A of that Part) for “2 or 2A” there is substituted “ 2(1), or in deciding whether it is satisfied as mentioned in paragraph 2A(1), 6(1) or 6A, ”.

### Commencement Information

**I8** S. 20 wholly in force at 5.4.2004, see s. 336(3) and S.I. 2004/829, art. 2(1)(2) (subject to art. 2(3)-(6))

## 21 Interpretation of Part 2

In this Part—

“bail” means bail in criminal proceedings (within the meaning of the 1976 Act),

“bail hostel” has the meaning given by section 2(2) of the 1976 Act,

“the 1976 Act” means the Bail Act 1976 (c. 63),

“vary” has the same meaning as in the 1976 Act.

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#### **Commencement Information**

**19** S. 21 wholly in force at 5.4.2004, see s. 336(3) and S.I. 2004/829, **art. 2(1)(2)** (subject to **art. 2(3)-(6)**)

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