
STATUTORY INSTRUMENTS

2013 No. 1554

The Criminal Procedure Rules 2013

PART 19

BAIL AND CUSTODY TIME LIMITS

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SECTION 1: GENERAL RULES

When this Part applies

- 19.1.**—(1) This Part applies where a magistrates’ court or the Crown Court can—
- (a) grant or withhold bail, or impose or vary a condition of bail; and
 - (b) where bail has been withheld, extend a custody time limit.
- (2) In this Part, ‘defendant’ includes a person who has been granted bail by a police officer.

[Note. See in particular—

- (a) *the Bail Act 1976(1)*;
- (b) *section 128 of the Magistrates’ Courts Act 1980(2) (general powers of magistrates’ courts in relation to bail)*;
- (c) *section 81 of the Senior Courts Act 1981(3) (general powers of the Crown Court in relation to bail)*;
- (d) *section 115 of the Coroners and Justice Act 2009(4) (exclusive power of the Crown Court to grant bail to a defendant charged with murder)*;
- (e) *section 22 of the Prosecution of Offences Act 1985(5) (provision for custody time limits); and*
- (f) *the Prosecution of Offences (Custody Time Limits) Regulations 1987(6) (maximum periods during which a defendant may be kept in custody pending trial).*

A summary of the general entitlement to bail, and of the exceptions to that entitlement, is at the end of this Part.]

Exercise of court’s powers to which this Part applies

- 19.2.**—(1) The court must not make a decision to which this Part applies unless—
- (a) each party to the decision and any surety directly affected by the decision—
 - (i) is present, or

(1) 1976 c. 63.

(2) 1980 c. 43; section 128 was amended by section 59 to, and paragraphs 2, 3 and 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 48 of the Police and Criminal Evidence Act 1984 (c. 60), section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41), sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(3) 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

(4) 2009 c. 25.

(5) 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph 57 of Schedule 3 and paragraphs 49 and 51 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 22 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(6) S.I. 1987/299; amended by sections 71 and 80 of, and paragraph 8 of Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 1995/555, 1999/2744, 2000/3284, 2012/1344.

- (ii) has had an opportunity to make representations;
- (b) on an application for bail by a defendant who is absent and in custody, the court is satisfied that the defendant—
 - (i) has waived the right to attend, or
 - (ii) was present when a court withheld bail in the case on a previous occasion and has been in custody continuously since then;
- (c) on a prosecutor’s appeal against a grant of bail, application to extend a custody time limit or appeal against a refusal to extend such a time limit—
 - (i) the court is satisfied that a defendant who is absent has waived the right to attend, or
 - (ii) the court is satisfied that it would be just to proceed even though the defendant is absent.
- (2) The court may make a decision to which this Part applies at a hearing, in public or in private.
- (3) The court may determine without a hearing an application to vary a condition of bail if—
 - (a) the parties to the application have agreed the terms of the variation proposed; or
 - (b) on an application by a defendant, the court determines the application no sooner than the fifth business day after the application was served.
- (4) The court may adjourn a determination to which this Part applies, if that is necessary to obtain information sufficient to allow the court to make the decision required.
- (5) At any hearing at which the court makes one of the following decisions, the court must announce in terms the defendant can understand (with help, if necessary) its reasons for—
 - (a) withholding bail, or imposing or varying a bail condition;
 - (b) granting bail, where the prosecutor opposed the grant; or
 - (c) where the defendant is under 18—
 - (i) imposing or varying a bail condition when ordering the defendant to be detained in local authority accommodation, or
 - (ii) ordering the defendant to be detained in youth detention accommodation.
- (6) At any hearing at which the court grants bail, the court must—
 - (a) tell the defendant where and when to surrender to custody; or
 - (b) arrange for the court officer to give the defendant, as soon as practicable, notice of where and when to surrender to custody.

[Note. See section 5 of the Bail Act 1976 and sections 93(7) and 102(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(7).

Under sections 57A and 57B of the Crime and Disorder Act 1998(8), a defendant is to be treated as present in court when, by virtue of a live link direction within the meaning of those sections, he or she attends a hearing through a live link.

Under section 91 of the 2012 Act, instead of granting bail to a defendant under 18 the court may—

(7) 2012 c. 10.

(8) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (a) remand him or her to local authority accommodation and, after consulting with that authority, impose on the defendant a condition that the court could impose if granting bail; or
- (b) remand him or her to youth detention accommodation, if the defendant is at least 12 years old and the other conditions, about the offence and the defendant, prescribed by the Act are met.]

Duty of justices' legal adviser

19.3.—(1) This rule applies—

- (a) only in a magistrates' court; and
 - (b) unless the court—
 - (i) includes a District Judge (Magistrates' Courts), and
 - (ii) otherwise directs.
- (2) A justices' legal adviser must—
- (a) assist an unrepresented defendant;
 - (b) give the court such advice as is required to enable it to exercise its powers;
 - (c) if required, attend the members of the court outside the courtroom to give such advice, but inform the parties of any advice so given.

[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(9).]

General duties of court officer

19.4.—(1) The court officer must arrange for a note or other record to be made of—

- (a) the parties' representations about bail; and
 - (b) the court's reasons for a decision—
 - (i) to withhold bail, or to impose or vary a bail condition, or
 - (ii) to grant bail, where the prosecutor opposed the grant.
- (2) The court officer must serve notice of a decision about bail on—
- (a) the defendant (but, in the Crown Court, only where the defendant's legal representative asks for such a notice, or where the defendant has no legal representative);
 - (b) the prosecutor (but only where the court granted bail, the prosecutor opposed the grant, and the prosecutor asks for such a notice);
 - (c) a party to the decision who was absent when it was made;
 - (d) a surety who is directly affected by the decision;
 - (e) the defendant's custodian, where the defendant is in custody and the decision requires the custodian—
 - (i) to release the defendant (or will do so, if a requirement ordered by the court is met), or
 - (ii) to transfer the defendant to the custody of another custodian;
 - (f) the court officer for any other court at which the defendant is required by that decision to surrender to custody.

(9) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(3) Where the court postpones the date on which a defendant who is on bail must surrender to custody, the court officer must serve notice of the postponed date on—

- (a) the defendant; and
- (b) any surety.

(4) Where a magistrates' court withholds bail in a case to which section 5(6A) of the Bail Act 1976(10) applies (remand in custody after hearing full argument on an application for bail), the court officer must serve on the defendant a certificate that the court heard full argument.

[Note. See section 5 of the Bail Act 1976(11); section 43 of the Magistrates' Courts Act 1980(12); and section 52 of the Mental Health Act 1983(13).]

SECTION 2: BAIL

Prosecutor's representations about bail

19.5.—(1) This rule applies whenever the court can grant or withhold bail.

(2) The prosecutor must provide the court with all the information in the prosecutor's possession which is material to what the court must decide.

(3) A prosecutor who opposes the grant of bail must specify—

- (a) each exception to the general right to bail on which the prosecutor relies; and
- (b) each consideration that the prosecutor thinks relevant.

(4) A prosecutor who wants the court to impose a condition on any grant of bail must—

- (a) specify each condition proposed; and
- (b) explain what purpose would be served by such a condition.

[Note. A summary of the general entitlement to bail and of the exceptions to that entitlement is at the end of this Part.]

Reconsideration of police bail by magistrates' court

19.6.—(1) This rule applies where a party wants a magistrates' court to reconsider a bail decision by a police officer.

(2) An application under this rule must be made to—

- (a) the magistrates' court to whose custody the defendant is under a duty to surrender, if any; or
- (b) any magistrates' court acting for the police officer's local justice area, in any other case.

(3) The applicant party must—

(10) 1976 c. 63; section 5(6A) was inserted by section 60 of the Criminal Justice Act 1982 (c. 48) and amended by section 165 of, and paragraph 53 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and by paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(11) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

(12) 1980 c. 43; section 43 was substituted by section 47 of the Police and Criminal Evidence Act 1984 (c. 60) and amended by paragraph 43 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraph 206 of Schedule 8 to the Courts Act 2003 (c. 39).

(13) 1983 c. 20; section 52 was amended by paragraph 55 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 11 of the Mental Health Act 2007 (c. 12) and paragraphs 53 and 57 of Schedule 21 to the Legal Services Act 2007 (c. 29).

- (a) apply in writing; and
- (b) serve the application on—
 - (i) the court officer,
 - (ii) the other party, and
 - (iii) any surety affected or proposed.
- (4) The application must—
 - (a) specify—
 - (i) the decision that the applicant wants the court to make,
 - (ii) each offence charged, or for which the defendant was arrested, and
 - (iii) the police bail decision to be reconsidered and the reasons given for it;
 - (b) explain, as appropriate—
 - (i) why the court should grant bail itself, or withdraw it, or impose or vary a condition, and
 - (ii) if the applicant is the prosecutor, what material information has become available since the police bail decision was made;
 - (c) propose the terms of any suggested condition of bail; and
 - (d) if the applicant wants an earlier hearing than paragraph (7) requires, ask for that, and explain why it is needed.
- (5) A prosecutor who applies under this rule must serve on the defendant, with the application, notice that the court has power to withdraw bail and, if the defendant is absent when the court makes its decision, order the defendant's arrest.
- (6) A party who opposes an application must—
 - (a) so notify the court officer and the applicant at once; and
 - (b) serve on each notice of the reasons for opposition.
- (7) Unless the court otherwise directs, the court officer must arrange for the court to hear the application as soon as practicable and in any event—
 - (a) if it is an application to withdraw bail, no later than the second business day after it was served;
 - (b) in any other case, no later than the fifth business day after it was served.
- (8) The court may—
 - (a) vary or waive a time limit under this rule;
 - (b) allow an application to be in a different form to one set out in the Practice Direction;
 - (c) if rule 19.2 allows, determine without a hearing an application to vary a condition.

[Note. The Practice Direction sets out a form of application for use in connection with this rule.

Under section 5B of the Bail Act 1976(14)—

- (a) *where a defendant has been charged with an offence which can be tried in the Crown Court; or*
- (b) *in an extradition case,*

(14) 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129(3) of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).

on application by the prosecutor a magistrates' court may withdraw bail granted by a constable, impose conditions of bail, or vary conditions of bail. See also sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1B) of the Police and Criminal Evidence Act 1984(15).

Under section 43B of the Magistrates' Courts Act 1980(16), where a defendant has been charged with an offence, on application by the defendant a magistrates' court may grant bail itself, in substitution for bail granted by a custody officer, or vary the conditions of bail granted by a custody officer. See also sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1C), (1D) of the Police and Criminal Evidence Act 1984(17).

Under section 47(1E) of the Police and Criminal Evidence Act 1984(18), where a defendant has been released on bail by a custody officer without being charged with an offence, on application by the defendant a magistrates' court may vary any conditions of that bail. See also sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1C) of the Act.]

Notice of application to consider bail

19.7.—(1) This rule applies where—

- (a) in a magistrates' court—
 - (i) a prosecutor wants the court to withdraw bail granted by the court, or to impose or vary a condition of such bail, or
 - (ii) a defendant wants the court to reconsider such bail before the next hearing in the case;
- (b) in the Crown Court, a party wants the court to grant bail that has been withheld, or to withdraw bail that has been granted, or to impose a new bail condition or to vary a present one;

(2) Such a party must—

- (a) apply in writing;
- (b) serve the application on—
 - (i) the court officer,
 - (ii) the other party, and
 - (iii) any surety affected or proposed; and
- (c) serve the application not less than 2 business days before any hearing in the case at which the applicant wants the court to consider it, if such a hearing is already due.

(15) 1984 c. 60; section 37 was amended by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41), sections 72 and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 29(4) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 28 of, and paragraphs 1 and 2 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), section 23(1) of, and paragraphs 1 and 2 of Schedule 1 to, the Drugs Act 2005 (c. 17) and sections 11 and 52 of, and paragraph 9 of Schedule 14 to, the Police and Justice Act 2006 (c. 48). Section 37C was inserted by section 28 of, and paragraphs 1 and 3 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44). Section 37CA was inserted by section 10 of, and paragraphs 1 and 8 of Schedule 6 to, the Police and Justice Act 2006 (c. 48). Section 46A was inserted by section 29 of the Criminal Justice and Public Order Act 1994 (c. 33), and amended by section 28 of, and paragraphs 1 and 5 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), sections 10 and 46 of, and paragraphs 1 and 7 of Schedule 6 to, the Police and Justice Act 2006 (c. 48) and sections 107 and 178 of, and Part 3 of Schedule 3 to, the Coroners and Justice Act 2009 (c. 25). Section 47(1B) was inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44) and amended by section 10 of, and paragraphs 1 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48).

(16) 1980 c. 43; section 43B was inserted by section 27 of, and paragraph 3 of Schedule 3 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(17) 1984 c. 60; section 47(1C) and (1D) were inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), and section 47(1C) was amended by section 10 of, and paragraphs 1 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48).

(18) 1984 c. 60; section 47(1E) was inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44).

- (3) The application must—
- (a) specify—
 - (i) the decision that the applicant wants the court to make,
 - (ii) each offence charged, and
 - (iii) each relevant previous bail decision and the reasons given for each;
 - (b) if the applicant is a defendant, explain—
 - (i) as appropriate, why the court should not withhold bail, or why it should vary a condition, and
 - (ii) what further information or legal argument, if any, has become available since the most recent previous bail decision was made;
 - (c) if the applicant is the prosecutor, explain—
 - (i) as appropriate, why the court should withdraw bail, or impose or vary a condition, and
 - (ii) what material information has become available since the most recent previous bail decision was made;
 - (d) propose the terms of any suggested condition of bail; and
 - (e) if the applicant wants an earlier hearing than paragraph (6) requires, ask for that, and explain why it is needed.
- (4) A prosecutor who applies under this rule must serve on the defendant, with the application, notice that the court has power to withdraw bail and, if the defendant is absent when the court makes its decision, order the defendant's arrest.
- (5) A party who opposes an application must—
- (a) so notify the court officer and the applicant at once; and
 - (b) serve on each notice of the reasons for opposition.
- (6) Unless the court otherwise directs, the court officer must arrange for the court to hear the application as soon as practicable and in any event—
- (a) if it is an application to grant or withdraw bail, no later than the second business day after it was served;
 - (b) if it is an application to impose or vary a condition, no later than the fifth business day after it was served.
- (7) The court may—
- (a) vary or waive a time limit under this rule;
 - (b) allow an application to be in a different form to one set out in the Practice Direction, or to be made orally;
 - (c) if rule 19.2 allows, determine without a hearing an application to vary a condition.

[Note. The Practice Direction sets out a form of application for use in connection with this rule.

In addition to the court's general powers in relation to bail—

- (a) *under section 3(8) of the Bail Act 1976(19), on application by either party the court may impose a bail condition or vary a condition it has imposed. Until the Crown Court makes its first bail decision in the case, a magistrates' court may vary a condition which it imposed on committing or sending a defendant for Crown Court trial.*

(19) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

- (b) *under section 5B of the Bail Act 1976(20), where the defendant is on bail and the offence is one which can be tried in the Crown Court, or in an extradition case, on application by the prosecutor a magistrates' court may withdraw bail, impose conditions of bail or vary the conditions of bail.*

Under Part IIA of Schedule 1 to the Bail Act 1976(21), if the court withholds bail then at the first hearing after that the defendant may support an application for bail with any argument as to fact or law, whether or not that argument has been advanced before. At subsequent hearings, the court need not hear arguments which it has heard previously.]

Defendant's application or appeal to the Crown Court after magistrates' court bail decision

- 19.8.**—(1) This rule applies where a defendant wants to—
- (a) apply to the Crown Court for bail after a magistrates' court has withheld bail; or
 - (b) appeal to the Crown Court after a magistrates' court has refused to vary a bail condition as the defendant wants.
- (2) The defendant must—
- (a) apply to the Crown Court in writing as soon as practicable after the magistrates' court's decision; and
 - (b) serve the application on—
 - (i) the Crown Court officer,
 - (ii) the magistrates' court officer,
 - (iii) the prosecutor, and
 - (iv) any surety affected or proposed.
- (3) The application must—
- (a) specify—
 - (i) the decision that the applicant wants the Crown Court to make, and
 - (ii) each offence charged;
 - (b) explain—
 - (i) as appropriate, why the Crown Court should not withhold bail, or why it should vary the condition under appeal, and
 - (ii) what further information or legal argument, if any, has become available since the magistrates' court's decision;
 - (c) propose the terms of any suggested condition of bail;
 - (d) if the applicant wants an earlier hearing than paragraph (6) requires, ask for that, and explain why it is needed; and
 - (e) on an application for bail, attach a copy of the certificate of full argument served on the defendant under rule 19.4(4).
- (4) The magistrates' court officer must as soon as practicable serve on the Crown Court officer—
- (a) a copy of the note or record made under rule 19.4(1) in connection with the magistrates' court's decision; and
 - (b) the date of the next hearing, if any, in the magistrates' court.

(20) 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129(3) of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).

(21) 1976 c. 63; Schedule 1, Part IIA was added by section 154 of the Criminal Justice Act 1988 (c. 33).

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- (5) A prosecutor who opposes the application must—
- (a) so notify the Crown Court officer and the defendant at once; and
 - (b) serve on each notice of the reasons for opposition.

(6) Unless the Crown Court otherwise directs, the court officer must arrange for the court to hear the application or appeal as soon as practicable and in any event no later than the business day after it was served.

- (7) The Crown Court may vary a time limit under this rule.

[Note. The Practice Direction sets out a form of application for use in connection with this rule.

Under section 81 of the Senior Courts Act 1981(22), the Crown Court may grant bail in a magistrates' court case in which the magistrates' court has withheld bail.

Under section 16 of the Criminal Justice Act 2003(23), a defendant may appeal to the Crown Court against a bail condition imposed by a magistrates' court only where—

- (a) *the condition is one that the defendant must—*
 - (i) *live and sleep at a specified place, or away from a specified place,*
 - (ii) *give a surety or a security,*
 - (iii) *stay indoors between specified hours,*
 - (iv) *comply with electronic monitoring requirements, or*
 - (v) *make no contact with a specified person; and*
- (b) *the magistrates' court has determined an application by either party to vary that condition.*

In an extradition case, where a magistrates' court withholds bail or imposes bail conditions, on application by the defendant the High Court may grant bail, or vary the conditions, under section 22 of the Criminal Justice Act 1967(24). For the procedure in the High Court, see Schedule 1 to the Civil Procedure Rules 1998 (RSC Order 79)(25).]

Prosecutor's appeal against grant of bail

- 19.9.**—(1) This rule applies where a prosecutor wants to appeal—
- (a) to the Crown Court against a grant of bail by a magistrates' court, in a case in which the defendant has been charged with, or convicted of, an offence punishable with imprisonment; or
 - (b) to the High Court against a grant of bail—
 - (i) by a magistrates' court, in an extradition case, or

(22) 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

(23) 2003 c. 44.

(24) 1967 c. 80; section 22 was amended by section 56 of, and paragraph 48 of Schedule 8 and Schedule 11 to, the Courts Act 1971 (c. 23), section 12 of, and paragraphs 36 and 37 of Schedule 2 and Schedule 3 to, the Bail Act 1976 (c. 63), section 65 of, and Schedules 12 and 13 to, the Criminal Law Act 1977 (c. 45), paragraph 15 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33), sections 17 and 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 42 of, and paragraph 27 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(25) S.I. 1998/3132; Schedule 1 RSC Order 79 was amended by S.I. 1999/1008, 2001/256, 2003/3361 and 2005/617.

- (ii) by the Crown Court, in a case in which the defendant has been charged with, or convicted of, an offence punishable with imprisonment (but not in a case in which the Crown Court granted bail on an appeal to which paragraph (1)(a) applies).
- (2) The prosecutor must tell the court which has granted bail of the decision to appeal—
 - (a) at the end of the hearing during which the court granted bail; and
 - (b) before the defendant is released on bail.
- (3) The court which has granted bail must exercise its power to remand the defendant in custody pending determination of the appeal.
- (4) The prosecutor must serve an appeal notice—
 - (a) on the court officer for the court which has granted bail and on the defendant;
 - (b) not more than 2 hours after telling that court of the decision to appeal.
- (5) The appeal notice must specify—
 - (a) each offence with which the defendant is charged;
 - (b) the decision under appeal;
 - (c) the reasons given for the grant of bail; and
 - (d) the grounds of appeal.
- (6) On an appeal to the Crown Court, the magistrates' court officer must, as soon as practicable, serve on the Crown Court officer—
 - (a) the appeal notice;
 - (b) a copy of the note or record made under rule 19.4(1) (record of bail decision); and
 - (c) notice of the date of the next hearing in the court which has granted bail.
- (7) If the Crown Court so directs, the Crown Court officer must arrange for the defendant to be assisted by the Official Solicitor in a case in which the defendant—
 - (a) has no legal representative; and
 - (b) asks for such assistance.
- (8) On an appeal to the Crown Court, the Crown Court officer must arrange for the court to hear the appeal as soon as practicable and in any event no later than the second business day after the appeal notice was served.
- (9) The prosecutor—
 - (a) may abandon an appeal to the Crown Court without the court's permission, by serving a notice of abandonment, signed by or on behalf of the prosecutor, on—
 - (i) the defendant,
 - (ii) the Crown Court officer, and
 - (iii) the magistrates' court officerbefore the hearing of the appeal begins; but
 - (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court's permission.
- (10) The court officer for the court which has granted bail must instruct the defendant's custodian to release the defendant on the bail granted by that court, subject to any condition or conditions of bail imposed, if—
 - (a) the prosecutor fails to serve an appeal notice within the time to which paragraph (4) refers; or

- (b) the prosecutor serves a notice of abandonment under paragraph (9).

[Note. See section 1 of the Bail (Amendment) Act 1993(26). The time limit for serving an appeal notice is prescribed by section 1(5) of the Act. It may be neither extended nor shortened.

For the procedure in the High Court, see Schedule 1 to the Civil Procedure Rules 1998 (RSC Order 79, rule 9) and the Practice Direction which supplements that Order. Under those provisions, the prosecutor must file in the High Court, among other things—

- (a) *a copy of the appeal notice served by the prosecutor under rule 19.9(4);*
- (b) *notice of the Crown Court decision to grant bail served on the prosecutor under rule 19.4(2); and*
- (c) *notice of the date of the next hearing in the Crown Court.]*

Consideration of bail in a murder case

19.10.—(1) This rule applies in a case in which—

- (a) the defendant is charged with murder; and
- (b) the Crown Court has not yet considered bail.

(2) The magistrates' court officer must arrange with the Crown Court officer for the Crown Court to consider bail as soon as practicable and in any event no later than the second business day after—

- (a) a magistrates' court sends the defendant to the Crown Court for trial; or
- (b) the first hearing in the magistrates' court, if the defendant is not at once sent for trial.

[Note. See section 115 of the Coroners and Justice Act 2009(27).]

Condition of residence

19.11.—(1) The defendant must notify the prosecutor of the address at which the defendant will live and sleep if released on bail with a condition of residence—

- (a) as soon as practicable after the institution of proceedings, unless already done; and
- (b) as soon as practicable after any change of that address.

(2) The prosecutor must help the court to assess the suitability of an address proposed as a condition of residence.

Electronic monitoring requirements

19.12.—(1) This rule applies where the court imposes electronic monitoring requirements, where available, as a condition of bail.

(2) The court officer must—

- (a) inform the person responsible for the monitoring ('the monitor') of—
 - (i) the defendant's name, and telephone number if available,
 - (ii) each offence with which the defendant is charged,
 - (iii) details of the place at which the defendant's presence must be monitored,

(26) 1993 c. 26; section 1 was amended by sections 200 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 18 of the Criminal Justice Act 2003 (c. 44), section 15 of, and paragraph 231 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4), section 42 of, and paragraph 28 of Schedule 13 to, the Police and Justice Act 2006 (c. 48) and paragraph 32 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(27) 2009 c. 25.

- (iv) the period or periods during which the defendant's presence at that place must be monitored, and
- (v) if fixed, the date on which the defendant must surrender to custody;
- (b) inform the defendant and, where the defendant is under 16, an appropriate adult, of the monitor's identity and the means by which the monitor may be contacted; and
- (c) notify the monitor of any subsequent—
 - (i) variation or termination of the electronic monitoring requirements, or
 - (ii) fixing or variation of the date on which the defendant must surrender to custody.

[Note. Under section 3(6ZAA) of the Bail Act 1976(28), the conditions of bail that the court may impose include requirements for the electronic monitoring of a defendant's compliance with other bail conditions, for example a curfew. Sections 3AA and 3AB of the 1976 Act(29) set out conditions for imposing such requirements.

Under section 3AC of the 1976 Act(30), where the court imposes electronic monitoring requirements they must provide for the appointment of a monitor.]

Accommodation or support requirements

19.13.—(1) This rule applies where the court imposes as a condition of bail a requirement, where available, that the defendant must—

- (a) reside in accommodation provided for that purpose by, or on behalf of, a public authority;
 - (b) receive bail support provided by, or on behalf of, a public authority.
- (2) The court officer must—
- (a) inform the person responsible for the provision of any such accommodation or support ('the service provider') of—
 - (i) the defendant's name, and telephone number if available,
 - (ii) each offence with which the defendant is charged,
 - (iii) details of the requirement,
 - (iv) any other bail condition, and
 - (v) if fixed, the date on which the defendant must surrender to custody;
 - (b) inform the defendant and, where the defendant is under 16, an appropriate adult, of—
 - (i) the service provider's identity and the means by which the service provider may be contacted, and
 - (ii) the address of any accommodation in which the defendant must live and sleep; and
 - (c) notify the service provider of any subsequent—
 - (i) variation or termination of the requirement,
 - (ii) variation or termination of any other bail condition, and

(28) 1976 c. 63; 1976 c. 63; section 3(6ZAA) was substituted, with sub-section (6ZAB), for sub-section (6ZAA) as inserted by section 131 of the Criminal Justice and Police Act 2001 (c. 16) by section 51 of, and paragraphs 1 and 2 of Schedule 11 to, the Criminal Justice and Immigration Act 2008 (c. 4) and amended by paragraphs 1 and 3 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(29) 1976 c. 63; section 3AA was inserted by section 131 of the Criminal Justice and Police Act 2001 (c. 16) and amended by sections 51 and 149 of, and paragraphs 1 and 3 of Schedule 11 to, and Part 4 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 4 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(30) 1976 c. 63; section 3AC was inserted by section 51 of, and paragraphs 1 and 4 of Schedule 11 to, the Criminal Justice and Immigration Act 2008 (c. 4) and amended by paragraphs 1 and 7 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(iii) fixing or variation of the date on which the defendant must surrender to custody.

Requirement for a surety or payment, etc.

- 19.14.**—(1) This rule applies where the court imposes as a condition of bail a requirement for—
- (a) a surety;
 - (b) a payment;
 - (c) the surrender of a document or thing.
- (2) The court may direct how such a condition must be met.
- (3) Unless the court otherwise directs, if any such condition or direction requires a surety to enter into a recognizance—
- (a) the recognizance must specify—
 - (i) the amount that the surety will be required to pay if the purpose for which the recognizance is entered is not fulfilled, and
 - (ii) the date, or the event, upon which the recognizance will expire;
 - (b) the surety must enter into the recognizance in the presence of—
 - (i) the court officer,
 - (ii) the defendant’s custodian, where the defendant is in custody, or
 - (iii) someone acting with the authority of either; and
 - (c) the person before whom the surety enters into the recognizance must at once serve a copy on—
 - (i) the surety, and
 - (ii) as appropriate, the court officer and the defendant’s custodian.
- (4) Unless the court otherwise directs, if any such condition or direction requires someone to make a payment, or surrender a document or thing—
- (a) that payment, document or thing must be made or surrendered to—
 - (i) the court officer,
 - (ii) the defendant’s custodian, where the defendant is in custody, or
 - (iii) someone acting with the authority of either; and
 - (b) the court officer or the custodian, as appropriate, must serve immediately on the other a statement that the payment, document or thing has been made or surrendered.
- (5) The custodian must release the defendant when each requirement ordered by the court has been met.

[Note. See also section 119 of the Magistrates’ Courts Act 1980(31).]

Forfeiture of a recognizance given by a surety

- 19.15.**—(1) This rule applies where the court imposes as a condition of bail a requirement that a surety enter into a recognizance and, after the defendant is released on bail,—
- (a) the defendant fails to surrender to custody as required, or
 - (b) it appears to the court that the surety has failed to comply with a condition or direction.

(31) 1980 c. 43; section 119 was amended by section 77 of, and paragraph 55 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48).

(2) The court officer must serve notice on—

- (a) the surety; and
- (b) each party to the decision to grant bail,

of the hearing at which the court will consider the forfeiture of the recognizance.

(3) The court must not forfeit the recognizance less than 5 business days after service of notice under paragraph (2).

[Note. If the purpose for which a recognizance is entered is not fulfilled, that recognizance may be forfeited by the court. If the court forfeits a surety's recognizance, the sum promised by that person is then payable to the Crown. See also section 120 of the Magistrates' Courts Act 1980(32).]

SECTION 3: CUSTODY TIME LIMITS

Application to extend a custody time limit

19.16.—(1) This rule applies where the prosecutor gives notice of application to extend a custody time limit.

(2) The court officer must arrange for the court to hear that application as soon as practicable after the expiry of—

- (a) 5 days from the giving of notice, in the Crown Court; or
- (b) 2 days from the giving of notice, in a magistrates' court.

(3) The court may shorten a time limit under this rule.

[Note. See regulation 7 of The Prosecution of Offences (Custody Time Limits) Regulations 1987(33).

Under regulations 4 and 5 of the 1987 Regulations(34), unless the court extends the time limit the maximum period during which the defendant may be in pre-trial custody is—

- (a) *in a case which can be tried only in a magistrates' court, 56 days pending the beginning of the trial;*
- (b) *in a magistrates' court, in a case which can be tried either in that court or in the Crown Court—*
 - (i) *70 days, pending the beginning of a trial in the magistrates' court, or*
 - (ii) *56 days, pending the beginning of a trial in the magistrates' court, if the court decides on such a trial during that period;*
- (c) *in the Crown Court, pending the beginning of the trial, 182 days from the sending of the defendant for trial, less any period or periods during which the defendant was in custody in the magistrates' court.*

Under section 22(3) of the Prosecution of Offences Act 1985(35), the court cannot extend a custody time limit which has expired, and must not extend such a time limit unless satisfied—

(32) 1980 c. 43; section 120 was amended by section 55 of the Crime and Disorder Act 1998 (c. 37). It is further amended by section 62 of, and paragraphs 45 and 56 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) with effect from a date to be appointed.

(33) S.I. 1987/299; regulation 7 was amended by S.I. 1989/767.

(34) S.I. 1987/299; regulation 4 was amended by section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 1999/2744. Regulation 5 was amended by sections 71 and 80 of, and paragraph 8 of Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 2000/3284, 2012/1344.

(35) 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph

- (a) *that the need for the extension is due to—*
 - (i) *the illness or absence of the accused, a necessary witness, a judge or a magistrate,*
 - (ii) *a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more defendants or two or more offences, or*
 - (iii) *some other good and sufficient cause; and*
- (b) *that the prosecution has acted with all due diligence and expedition.]*

Appeal against custody time limit decision

- 19.17.**—(1) This rule applies where—
- (a) a defendant wants to appeal to the Crown Court against a decision by a magistrates’ court to extend a custody time limit;
 - (b) a prosecutor wants to appeal to the Crown Court against a decision by a magistrates’ court to refuse to extend a custody time limit.
- (2) The appellant must serve an appeal notice—
- (a) on—
 - (i) the other party to the decision,
 - (ii) the Crown Court officer, and
 - (iii) the magistrates’ court officer;
 - (b) in a defendant’s appeal, as soon as practicable after the decision under appeal;
 - (c) in a prosecutor’s appeal—
 - (i) as soon as practicable after the decision under appeal, and
 - (ii) before the relevant custody time limit expires.
- (3) The appeal notice must specify—
- (a) each offence with which the defendant is charged;
 - (b) the decision under appeal;
 - (c) the date on which the relevant custody time limit will expire;
 - (d) on a defendant’s appeal, the date on which the relevant custody time limit would have expired but for the decision under appeal; and
 - (e) the grounds of appeal.
- (4) The Crown Court officer must arrange for the Crown Court to hear the appeal as soon as practicable and in any event no later than the second business day after the appeal notice was served.
- (5) The appellant—
- (a) may abandon an appeal without the Crown Court’s permission, by serving a notice of abandonment, signed by or on behalf of the appellant, on—
 - (i) the other party,
 - (ii) the Crown Court officer, and
 - (iii) the magistrates’ court officer
 before the hearing of the appeal begins; but

- (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court's permission.

[Note. See section 22(7), (8), (9) of the Prosecution of Offences Act 1985(36).]

Summary of the general entitlement to bail and of the exceptions

The court must consider bail whenever it can order the defendant's detention pending trial or sentencing, or in an extradition case, and whether an application is made or not. Under section 4 of the Bail Act 1976(37), the general rule, subject to exceptions, is that a defendant must be granted bail. Under Part IIA of Schedule 1 to the Act(38), if the court decides not to grant the defendant bail then at each subsequent hearing the court must consider whether to grant bail.

Section 3 of the Bail Act 1976(39) allows the court, before granting bail, to require a surety or security to secure the defendant's surrender to custody; and allows the court, on granting bail, to impose such requirements as appear to the court to be necessary—

- (a) to secure that the defendant surrenders to custody;
- (b) to secure that the defendant does not commit an offence while on bail;
- (c) to secure that the defendant does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to the defendant or any other person;
- (d) for the defendant's own protection or, if a child or young person, for the defendant's welfare or in the defendant's own interests;
- (e) to secure the defendant's availability for the purpose of enabling enquiries or a report to be made to assist the court in dealing with the defendant for the offence;
- (f) to secure that before the time appointed for surrender to custody the defendant attends an interview with a legal representative.

Under section 3 of the Bail Act 1976, a person granted bail in criminal proceedings is under a duty to surrender to custody as required by that bail. Under section 6 of the Act, such a person who fails without reasonable cause so to surrender commits an offence and, under section 7, may be arrested.

Exceptions to the general right to bail are listed in Schedule 1 to the Bail Act 1976(40). They differ according to the category of offence concerned. Under section 4(2B) of the 1976 Act(41),

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- (36) 1985 c. 23; section 22(7) and (8) was amended by section 43 of the Crime and Disorder Act 1998 (c. 37).
- (37) 1976 c. 63; section 4 was amended by section 154 of, and paragraph 145 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), section 168 of, and paragraphs 32 and 33 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Criminal Justice and Court Services Act 2000 (c. 43), sections 198 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 304 of, and paragraphs 20 and 22 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), section 42 of, and paragraph 34 of Schedule 13 to, the Police and Justice Act 2006 (c. 48), sections 6 and 148 of, and paragraphs 23 and 102 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 19 of Schedule 7, and Schedule 8, to the Policing and Crime Act 2009 (c. 26).
- (38) 1976 c. 63; Schedule 1, Part IIA was added by section 154 of the Criminal Justice Act 1988 (c. 33).
- (39) 1976 c. 63; section 3 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 34 of the Mental Health (Amendment) Act 1982 (c. 51), paragraph 46 of Schedule 4 to the Mental Health Act 1983 (c. 20), section 15 of, and paragraph 9 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 131 of the Criminal Justice Act 1988 (c. 33), sections 27 and 168 of, and paragraph 12 of Schedule 9 and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 54 and 120 of, and paragraph 37 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), paragraph 51 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 131 of the Criminal Justice and Police Act 2001 (c. 16), sections 13 and 19 of, and paragraph 48 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), paragraphs 33 and 34 of Schedule 21 to the Legal Services Act 2007 (c. 29) and paragraphs 1 and 2 of Schedule 11, paragraphs 1 and 2 of Schedule 12, to the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 1 to 4 of Schedule 11, and paragraphs 14 and 15 of Schedule 12, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (40) 1976 c. 63; Schedule 1 was amended by section 34 of the Mental Health (Amendment) Act 1982 (c. 51), sections 153, 154 and 155 of the Criminal Justice Act 1988 (c. 33), paragraph 22 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), section 26 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 38 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 54 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 129 and 137 of, and Schedule 7 to, the Criminal Justice and Police Act 2001 (c. 16), section 198 of the Extradition Act 2003

in an extradition case there is no general right to bail where the defendant is alleged to have been convicted in the territory requesting extradition.

Under Part I of Schedule 1 to the 1976 Act, where the offence is punishable with imprisonment, and is not one that can be tried only in a magistrates' court, or in an extradition case—

- (a) the defendant need not be granted bail if the court is satisfied that—*
 - (i) there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice,*
 - (ii) there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (within the meaning of section 33 of the Family Law Act 1996), or cause that person to fear injury,*
 - (iii) the defendant should be kept in custody for his or her own protection or welfare, or*
 - (iv) it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for the court to take the decisions required;*
- (b) the defendant need not be granted bail if it appears to the court that the defendant was on bail at the time of the offence (this exception does not apply in an extradition case);*
- (c) the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail;*
- (d) the defendant need not be granted bail if in custody pursuant to a sentence;*
- (e) the defendant need not be granted bail if it appears to the court that it would be impracticable to complete enquiries or a report for which the case is to be adjourned without keeping the defendant in custody;*
- (f) the defendant may not be granted bail if charged with murder, unless the court is of the opinion that there is no significant risk of the defendant committing an offence while on bail that would, or would be likely to, cause physical or mental injury to some other person;*
- (g) the defendant in an extradition case need not be granted bail if he or she was on bail on the date of the alleged offence and that offence is not one that could be tried only in a magistrates' court if it were committed in England or Wales.*

Exceptions (a)(i), (b) and (c) do not apply where—

- (a) the defendant is 18 or over;*
- (b) the defendant has not been convicted of an offence in those proceedings; and*
- (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in those proceedings.*

In deciding whether an exception to the right to bail applies the court must have regard to any relevant consideration, including—

- (a) the nature and seriousness of the offence, and the probable method of dealing with the defendant for it;*

(c. 41), sections 13, 14, 15, 19 and 20 of, and paragraphs 20 and 23 of Schedule 32 and paragraphs 1 and 3 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), paragraph 40 of the Schedule to S.I. 2005/886, paragraph 78 of Schedule 16, and Schedule 17, to the Armed Forces Act 2006 (c. 52), paragraphs 1, 4, 5 and 6 of Schedule 12 to the Criminal Justice and Immigration Act 2008 (c. 4), section 114 of the Coroners and Justice Act 2009 (c. 25) and paragraphs 10 to 31 of Schedule 11, and paragraphs 14 and 17 of Schedule 12, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(41) 1976 c. 63; section 4(2B) was inserted by section 198 of the Extradition Act 2003 (c. 41) and amended by paragraph 34 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

- (b) *the character, antecedents, associations and community ties of the defendant;*
- (c) *the defendant's record of fulfilling obligations imposed under previous grants of bail; and*
- (d) *except where the case is adjourned for enquires or a report, the strength of the evidence of the defendant having committed the offence.*

Under Part IA of Schedule 1 to the 1976 Act, where the offence is punishable with imprisonment, and is one that can be tried only in a magistrates' court—

- (a) *the defendant need not be granted bail if it appears to the court that—*
 - (i) *having previously been granted bail in criminal proceedings, the defendant has failed to surrender as required and, in view of that failure, the court believes that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, or*
 - (ii) *the defendant was on bail on the date of the offence and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail;*
- (b) *the defendant need not be granted bail if the court is satisfied that—*
 - (i) *there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to some other person, or cause some other person to fear such injury,*
 - (ii) *the defendant should be kept in custody for his or her own protection or welfare, or*
 - (iii) *it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for the court to take the decisions required;*
- (c) *the defendant need not be granted bail if in custody pursuant to a sentence;*
- (d) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice.*

Exceptions (a) and (d) do not apply where—

- (a) *the defendant is 18 or over;*
- (b) *the defendant has not been convicted of an offence in those proceedings; and*
- (c) *it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in those proceedings.*

Under Part II of Schedule 1 to the 1976 Act, where the offence is not punishable with imprisonment—

- (a) *the defendant need not be granted bail if it appears to the court that having previously been granted bail in criminal proceedings, the defendant has failed to surrender as required and, in view of that failure, the court believes that, if released on bail (with or without conditions), the defendant would fail to surrender to custody;*
- (b) *the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his or her own protection or welfare;*
- (c) *the defendant need not be granted bail if in custody pursuant to a sentence;*
- (d) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with*

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or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice;

- (e) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (within the meaning of section 33 of the Family Law Act 1996), or to cause that person to fear such injury.*

Exceptions (a) and (d) apply only where—

- (a) *the defendant is under 18; and*
(b) *the defendant has been convicted in those proceedings.*

Further exceptions to the general right to bail are set out in section 25 of the Criminal Justice and Public Order Act 1994(42), under which a defendant charged with murder, attempted murder, manslaughter, rape or another sexual offence specified in that section, and who has been previously convicted of such an offence, may be granted bail only if there are exceptional circumstances which justify it.

(42) 1994 c. 33; section 25 was amended by section 56 of the Crime and Disorder Act 1998 (c. 37), paragraph 160 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 32 of Schedule 6 to the Sexual Offences Act 2003 (c. 42), paragraph 67 of Schedule 32 and Schedule 37 to the Criminal Justice Act 2003 (c. 44), article 16 of S.I. 2008/1779, paragraph 3 of Schedule 17, and Schedule 23, to the Coroners and Justice Act 2009 (c. 25) and paragraph 33 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).