



Immigration and Asylum Act 1999

1999 CHAPTER 33

PART III

BAIL

Routine bail hearings

44 Bail hearings for detained persons

- (1) This section applies if a person is detained under any provision of the 1971 Act.
- (2) The Secretary of State must arrange a reference to the court for it to determine whether the detained person should be released on bail.
- (3) The duty under this section to arrange a reference does not apply if the detained person—
 - (a) is also detained otherwise than under a provision of the 1971 Act;
 - (b) is liable (under section 3(6) of that Act) to deportation as a result of the recommendation of a court; or
 - (c) has given to the Secretary of State, and has not withdrawn, written notice that he does not wish his case to be referred to a court under this section.
- (4) The Secretary of State must secure that a first reference to the court is made—
 - (a) in the case of a reference to the Commission, in accordance with rules; and
 - (b) in any other case, no later than the eighth day following that on which the detained person was detained.
- (5) If the detained person remains in detention, the Secretary of State must secure that a second reference to the court is made—
 - (a) in the case of a reference to the Commission, in accordance with rules; and
 - (b) in any other case, no later than the thirty-sixth day following that on which the detained person was detained.

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- (6) A reference under subsection (5) may not be heard by the court before the thirty-third day following that on which the detained person was detained.
- (7) The court hearing a case referred to it under this section must proceed as if the detained person had made an application to it for bail.
- (8) The court must determine the matter—
 - (a) in the case of a reference to the Commission, in accordance with rules; and
 - (b) in any other case—
 - (i) on a first reference, before the tenth day following that on which the person concerned was detained; and
 - (ii) on a second reference, before the thirty-eighth day following that on which he was detained.
- (9) Subsection (8) does not apply if the detained person has been released or has given notice under subsection (3)(c).
- (10) If it appears to the Secretary of State that there has been a failure to comply with subsection (4) or (5), he must refer the matter to the court, and the court must deal with the reference, as soon as is reasonably practicable.
- (11) If it appears to the Secretary of State that there has been a failure to comply with subsection (8), he must notify the court concerned, and the court must deal with the matter, as soon as is reasonably practicable.
- (12) In this Part “court” means—
 - (a) if the detained person has brought an appeal under the Immigration Acts, the court or other appellate authority dealing with his appeal;
 - (b) in the case of a detained person to whom section 3(2) of the Special Immigration Appeals Commission Act 1997 applies (jurisdiction in relation to bail for persons detained on grounds of national security), the Commission; and
 - (c) in any other case, such magistrates' court as the Secretary of State considers appropriate or, in Scotland, an adjudicator.
- (13) Rules made by the Lord Chancellor under section 5 of the Special Immigration Appeals Commission Act 1997 may include provision made for the purposes of this section; and in subsections (4), (5) and (8) “rules” means rules made by virtue of this subsection.
- (14) The Secretary of State may by regulations make provision modifying the application of this section in relation to cases where the proceedings on a reference under this section are adjourned to enable medical or other reports to be obtained or for any other reason.
- (15) The regulations may, in particular, provide for the requirement for there to be a second reference not to apply in prescribed circumstances.
- (16) This section does not affect any other provision under which the detained person may apply for, or be released on, bail.

45 Location of bail hearings

- (1) The Secretary of State may, in relation to a particular case or class of case, direct that the hearing of a reference under section 44 is to be at a specified place.
- (2) The places that may be specified include, in particular—
 - (a) any place at which a court sits;
 - (b) any place at which appeals under this Act are heard;
 - (c) detention centres;
 - (d) prisons; or
 - (e) any particular premises or rooms within a place of a kind mentioned in paragraphs (a) to (d).
- (3) A direction under subsection (1) has effect notwithstanding any other direction which may be given as to the place in which the court is to sit.
- (4) A direction under subsection (1) requires the approval of the Lord Chancellor.
- (5) “Specified” means specified in the direction.

46 General right to be released on bail

- (1) On a reference under section 44, the court must release the detained person on bail unless—
 - (a) subsection (2), (3) or (4) applies; or
 - (b) the court has imposed a requirement under section 47(1) which has not been complied with.
- (2) The detained person need not be granted bail if the court is satisfied that there are substantial grounds for believing that if released on bail he would—
 - (a) fail to comply with one or more of the conditions of bail or of any recognizance or bail bond;
 - (b) commit an offence while on bail which is punishable with imprisonment;
 - (c) be likely to cause danger to public health; or
 - (d) alone or with others, be a serious threat to the maintenance of public order.
- (3) The detained person need not be granted bail if the court is satisfied that—
 - (a) he is or has been knowingly involved with others in a concerted attempt by all or some of them to enter the United Kingdom in breach of immigration law;
 - (b) he is suffering from mental disorder and his continued detention is necessary in his own interests or for the protection of any other person;
 - (c) he is under the age of 18 and, while arrangements ought to be made for his care in the event of his release from detention, no satisfactory arrangements have been made;
 - (d) he is required to submit to an examination by an immigration officer under paragraph 2 or 2A of Schedule 2 to the 1971 Act and there is no relevant decision which the officer is in a position to take; or
 - (e) directions for his removal from the United Kingdom are in force.
- (4) The detained person need not be granted bail if the court is satisfied that he is a person to whom section 3(2) of the Special Immigration Appeals Commission Act 1997 (national security cases) applies.

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- (5) For the purposes of this section, the question whether an offence is one which is punishable with imprisonment is to be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.
- (6) “Immigration law” means any provision of the Immigration Acts or any similar provision in force in any part of the British Islands.
- (7) Each of the following is a relevant decision—
- (a) a decision as to whether, and if so how, to exercise the powers conferred by paragraph 21 of Schedule 2 to the 1971 Act;
 - (b) a decision as to whether to grant the person concerned leave to enter, or remain in, the United Kingdom;
 - (c) a decision as to whether to cancel his leave to enter the United Kingdom under paragraph 2A(8) of that Schedule.
- (8) The Secretary of State may by order amend subsection (2) or (3) by adding to or restricting the circumstances in which the subsection applies.
- (9) If bail is granted under this section, the appropriate court may, on an application by or on behalf of the person released, vary any condition on which it was granted.
- (10) If bail is granted under this section, the appropriate court may, on an application by or on behalf of the Secretary of State, vary any condition on which it was granted or impose conditions on it.
- (11) “Appropriate court” means—
- (a) if the person released has brought an appeal under the Immigration Acts, the court or other appellate body dealing with his appeal;
 - (b) in any other case, the court which released the person concerned on bail.

47 Powers exercisable on granting bail

- (1) Before releasing a person on bail under section 46, the court may require—
- (a) a recognizance or, in Scotland, a bail bond to be entered into; or
 - (b) security to be given by the person bailed or on his behalf.
- (2) The court may impose a requirement under subsection (1) only if it considers that its imposition is necessary to secure compliance with any condition to which bail granted under section 46 will be subject as a result of subsection (3), (4) or (5).
- (3) Bail granted under section 46 by the Commission is subject to a condition requiring the person bailed to appear before it at a specified time and place.
- (4) Bail granted under section 46 by a court or other appellate authority (other than the Commission) dealing with an appeal by the person bailed is subject to a condition requiring him—
- (a) to appear before the court or authority at a time and place specified by it; and
 - (b) if the appeal is dismissed, withdrawn or abandoned, to appear before an immigration officer at such time and place as may be notified to him in writing by an immigration officer.
- (5) In any other case, bail granted under section 46 is subject to a condition requiring the person bailed to appear before an immigration officer—
- (a) at a time and place specified by the court; or

- (b) at such other time and place as may be notified to him in writing by an immigration officer.
- (6) Bail granted under section 46 may be subject to such other conditions as appear to the court to be likely to result in the appearance of the person bailed at the required time and place.
- (7) A recognizance taken under this section may be with or without sureties, as the court may determine.
- (8) Subsections (9) and (10) apply if, on a reference under section 44, the court has power to release the detained person on bail but is not required to do so by section 46.
- (9) The court may, instead of releasing him—
 - (a) fix the amount of any recognizance, bail bond or security to be taken on his release on bail (including the amount in which any sureties are to be bound); and
 - (b) settle the terms of any conditions to be imposed on his release on bail.
- (10) The person concerned must be released on bail on the recognizance or bond being taken, or the security being given.
- (11) A person released on bail under section 46 is to be subject to such restrictions (if any) as to his employment or occupation while he is in the United Kingdom as may from time to time be notified to him in writing by an immigration officer.
- (12) Any restriction imposed on a person under subsection (11) has effect for the purposes of this Part as a condition of his bail.

48 Forfeiture

- (1) If it appears to a court that a mandatory bail condition has been broken, it may—
 - (a) by order declare the recognizance to be forfeited; and
 - (b) order any person bound by the recognizance (whether as principal or surety) to pay the sum in which he is bound or such part of that sum, if any, as the court thinks fit.
- (2) “Mandatory bail condition” means a condition—
 - (a) to which bail granted under section 46 is subject as a result of section 47(3), (4) or (5); and
 - (b) in relation to which the court has taken a recognizance under section 47.
- (3) If the court which makes an order under subsection (1) is not a magistrates' court, it must—
 - (a) specify a magistrates' court which is, for the purposes of collection, enforcement and remission of the sum forfeited, to be treated as the court which ordered the forfeiture; and
 - (b) as soon as practicable give particulars of the recognizance to—
 - (i) in England and Wales, the justices' chief executive appointed by the magistrates' court committee whose area includes the petty sessions area, or
 - (ii) in Northern Ireland, the clerk of petty sessions for the petty sessions district,
for which the specified court acts.

- (4) Any sum collected as a result of subsection (3)(a) must be paid to the Lord Chancellor.
- (5) The Lord Chancellor may, with the approval of the Treasury, make regulations as to the times at which and the manner in which accounts for, and payments of, sums collected as a result of subsection (3)(a) must be made and for the keeping and auditing of accounts in relation to such sums.
- (6) If a person fails to comply with any of the conditions of a bail bond taken by a court under section 47, the court may declare the bail to be forfeited.
- (7) Any bail forfeited by a court under subsection (6)—
 - (a) must be transmitted to the sheriff court having jurisdiction in the area where the proceedings took place; and
 - (b) is to be treated as having been forfeited by that court.

49 Forfeiture of securities

- (1) If a court is satisfied that a person (“A”) by whom, or on whose behalf, security has been given under section 47 has broken a mandatory bail condition, it may order the security to be forfeited unless it appears that A had reasonable cause for breaking the condition.
- (2) The order may provide for the forfeiture to extend to a specified amount which is less than the value of the security.
- (3) An order under subsection (1) takes effect, unless previously revoked, at the end of the period of 21 days beginning with the day on which it is made.
- (4) Any sum forfeited as a result of this section must be paid to the Lord Chancellor.
- (5) Subsection (6) applies if a court which has made an order under subsection (1) is satisfied, on an application made by or on behalf of the person who gave the security, that A did after all have reasonable cause for breaking the condition.
- (6) The court may by order—
 - (a) remit the forfeiture; or
 - (b) provide for it to extend to a specified amount which is less than the value of the security.
- (7) An application under subsection (5)—
 - (a) may be made before or after the order for forfeiture has taken effect; but
 - (b) may not be entertained unless the court is satisfied that the Secretary of State was given reasonable notice of the applicant’s intention to make the application.
- (8) The Lord Chancellor may, with the approval of the Treasury, make regulations as to the times at which and the manner in which accounts for, and payments of, sums forfeited as a result of this section must be made and for keeping and auditing of accounts in relation to such sums.
- (9) “Mandatory bail condition” means a condition—
 - (a) to which bail granted under section 46 is subject as a result of section 47(3), (4) or (5); and
 - (b) in relation to which a person has given security under section 47.

50 Power of arrest

- (1) An immigration officer or constable who has reasonable grounds for believing that a person released on a reference under section 44 has broken or is likely to break any condition on which he was bailed, may arrest him without a warrant.
- (2) Subsection (3) applies if a person other than the person bailed (“a third party”)—
 - (a) has agreed to act as a surety in relation to a recognizance entered into under section 47; or
 - (b) has given security on behalf of the person bailed under that section.
- (3) If an immigration officer or constable is notified in writing by a third party—
 - (a) of his belief that a person released on a reference under section 44 is likely to break the condition that he must appear at the time and place required; and
 - (b) of the third party’s wish, for that reason, to be relieved of his obligations as a surety or to have the security given returned to him,the officer or constable may arrest the person released without a warrant.
- (4) Subsection (5) applies if—
 - (a) a justice of the peace is, by written information on oath, satisfied that there are reasonable grounds for suspecting that a person liable to be arrested under this section is to be found on any premises;
 - (b) in Scotland, the sheriff or a justice of the peace is by evidence on oath so satisfied; or
 - (c) in Northern Ireland, a justice of the peace is by written complaint on oath so satisfied.
- (5) The justice of the peace or the sheriff may grant a warrant authorising any immigration officer or constable to enter, if need be by reasonable force, the premises named in the warrant for the purpose of searching for and arresting the person concerned.
- (6) A person arrested under this section must, if required by a condition on which he was released to appear before an immigration officer within 24 hours after his arrest, be brought before an immigration officer within that period.
- (7) A person arrested under this section must, if he was released under section 46 by the Commission, be brought before it within twenty-four hours after his arrest.
- (8) Subsection (9) applies if a person has been arrested under this section and—
 - (a) neither subsection (6) nor subsection (7) applies to him; or
 - (b) he has been brought before an immigration officer under subsection (6) but has not been released.
- (9) The arrested person must be brought before—
 - (a) a justice of the peace acting for the petty sessions area in which he was arrested;
 - (b) in Scotland, an adjudicator or, if that is not practicable within 24 hours after his arrest, the sheriff; or
 - (c) in Northern Ireland, a magistrates’ court acting for the county court division in which he was arrested.
- (10) If subsection (9) applies, the arrested person must be brought before the person or court concerned—
 - (a) as soon as is practicable after his arrest; and

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- (b) if subsection (9)(a) or (c) applies, in any event within 24 hours after his arrest.
- (11) Subsections (12) and (13) apply in relation to an arrested person dealt with under subsection (7) or (9).
- (12) The court or person dealing with the matter may, if of the opinion that the arrested person has broken or is likely to break any condition on which he was released—
 - (a) give a direction that the arrested person be detained under the authority of the person by whom he was arrested;
 - (b) release him on his original bail; or
 - (c) release him on a new recognizance (with or without sureties) or on new bail.
- (13) If not of that opinion, that court or person must release the arrested person on his original bail.
- (14) In reckoning any period of 24 hours for the purposes of this section, no account is to be taken of Christmas Day, Good Friday or any Sunday.

Procedure

51 Procedure

- (1) Any rules made in connection with bail hearings resulting from any provision of, or made under, this Part must include provision requiring the Secretary of State to notify—
 - (a) the detained person who is the subject of the hearing of a reference under section 44, and
 - (b) if the Secretary of State is aware that that person will be represented at the hearing (whether or not by an authorised advocate), the person who will be representing him at the hearing,
 of the date, place and time of the hearing as soon as is reasonably practicable after the Secretary of State is given that information by the magistrates' court.
- (2) If a person has been refused bail—
 - (a) on a reference under section 44, or
 - (b) on an application under the 1971 Act, the Asylum and Immigration Appeals Act 1993 or the Special Immigration Appeals Commission Act 1997,
 he may, on the first subsequent such reference or application, advance any argument as to fact or law.
- (3) But on any subsequent such reference or application the court need not hear any argument as to fact or law that that court has heard previously.
- (4) A magistrates' court dealing with a reference under section 44 must sit in open court unless—
 - (a) the detained person has made a claim for asylum and the court considers that there are compelling reasons why it should sit in private; or
 - (b) the court considers that the interests of the administration of justice require it to sit in private.
- (5) Any proceedings before a magistrates' court or the sheriff under this Part may be conducted—

- (a) on behalf of the Secretary of State, by a person authorised by him, or
 - (b) on behalf of the detained person, by a person nominated by him,
- even though that person is not an authorised advocate.

(6) “Authorised advocate”—

- (a) in relation to England and Wales, has the meaning given by section 119 of the Courts and Legal Services Act 1990;
- (b) in relation to Scotland, means an advocate or solicitor;
- (c) in relation to Northern Ireland, means a barrister or solicitor.

(7) “Rules” means rules made by the Lord Chancellor under section 144 of the Magistrates' Courts Act 1980 or under any corresponding provision having effect in Northern Ireland.

52 Use of live television links at bail hearings

- (1) On a reference under section 44, the court may, after hearing representations from the parties, direct that the detained person is to be treated as being present in the court if he is able (whether by means of a live television link or otherwise) to see and hear the court and to be seen and heard by it.
- (2) If the detained person wishes to make representations under subsection (1) he must do so by using the facilities that will be used if the court decides to give the proposed direction.
- (3) If, after hearing representations from the parties, the court decides not to give a direction, it must give its reasons for refusing.
- (4) The court may not give a direction unless—
 - (a) it has been notified by the Secretary of State that facilities are available in the relevant institution which will enable the detained person to see and hear the court and to be seen and heard by it; and
 - (b) the notice has not been withdrawn.
- (5) “Relevant institution” means the institution in which the detained person will be detained at the time of the bail hearing.

Bail hearings under other enactments

53 Applications for bail in immigration cases

- (1) The Secretary of State may by regulations make new provision in relation to applications for bail by persons detained under the 1971 Act.
- (2) The regulations may confer a right to be released on bail in prescribed circumstances.
- (3) The regulations may, in particular, make provision—
 - (a) creating or transferring jurisdiction to hear an application for bail by a person detained under the 1971 Act;
 - (b) as to the places in which such an application may be held;
 - (c) as to the procedure to be followed on, or in connection with, such an application;

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- (d) as to circumstances in which, and conditions (including financial conditions) on which, an applicant may be released on bail;
 - (e) amending or repealing any enactment so far as it relates to such an application.
- (4) The regulations must include provision for securing that an application for bail made by a person who has brought an appeal under any provision of this Act or the Special Immigration Appeals Commission Act 1997 is heard by the appellate authority hearing that appeal.
- (5) When exercising his power under subsection (1), the Secretary of State must have regard to the desirability, in relation to applications for bail by persons detained under the 1971 Act, of making provision similar to that which is made by this Part in relation to references to the court under section 44.
- (6) Regulations under this section require the approval of the Lord Chancellor.
- (7) In so far as regulations under this section relate to the sheriff or the Court of Session, the Lord Chancellor must obtain the consent of the Scottish Ministers before giving his approval.

54 Extension of right to apply for bail in deportation cases

- (1) Paragraph 2 of Schedule 3 to the 1971 Act (detention or control pending deportation) is amended as follows.
- (2) In sub-paragraph (1), at the end insert “or he is released on bail”.
- (3) In sub-paragraph (3), after “unless” insert “he is released on bail or”.
- (4) After sub-paragraph (4) insert—
- “(4A) Paragraphs 22 to 25 of Schedule 2 to this Act apply in relation to a person detained under sub-paragraph (1), (2) or (3) as they apply in relation to a person detained under paragraph 16 of that Schedule.”

Grants

55 Grants to voluntary organisations

- (1) The Secretary of State may, with the approval of the Treasury, make grants to any voluntary organisation which provides advice or assistance for detained persons in connection with proceedings under this Part.
- (2) Grants may be made on such terms, and subject to such conditions, as the Secretary of State may determine.