



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 - (c) has given to the Secretary of State, and has not withdrawn, written notice that he does not wish his case to be referred to a court under this section.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.

Status: This is the original version (as it was originally enacted).

- (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.