



# Justice (Northern Ireland) Act 2004

## 2004 CHAPTER 4

### *Bail*

#### **10 Prosecution right of appeal against grant of bail by magistrates' court** **N.I.**

(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 the High Court against the granting of bail.

[<sup>F1</sup>(1A) Where a magistrates' court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to the High Court against the granting of bail.]

(2) Subsection (1) applies only where the prosecution is conducted—

- (a) by or on behalf of the Director of Public Prosecutions, or
- (b) on behalf of the Police Service of Northern Ireland (whether by a member of that Service or any other person).

(3) An appeal under subsection (1) [<sup>F2</sup>or (1A)] may be made only if—

- (a) the prosecution made representations that bail should not be granted, and
- (b) the representations were made before it was granted.

(4) Where the prosecution wishes to exercise the right of appeal under subsection (1) [<sup>F3</sup>or (1A)], oral notice of appeal shall be given to [<sup>F4</sup>the court which has granted bail] at the conclusion of the proceedings in which bail has been granted and before the release from custody of the person concerned.

(5) Written notice of appeal shall thereafter be served on [<sup>F5</sup>the court which has granted bail] and the person concerned within two hours of the conclusion of such proceedings.

(6) On receipt from the prosecution of oral notice of appeal from its decision to grant bail, [<sup>F5</sup>the court which has granted bail] shall remand in custody the person concerned, until the appeal is determined or otherwise disposed of.

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*Changes to legislation: There are currently no known outstanding effects for the Justice (Northern Ireland) Act 2004, Cross Heading: Bail. (See end of Document for details)*

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- (7) Where the prosecution fails, within the period of two hours mentioned in subsection (5), to serve one or both of the notices required by that subsection, the appeal shall be deemed to have been disposed of.
- (8) The hearing of an appeal under subsection (1) [<sup>F6</sup>or (1A)] against a decision of the <sup>F7</sup>. . . court to grant bail shall be commenced within 48 hours, excluding weekends, Christmas Day, Good Friday and a bank holiday, from the time when oral notice of appeal is given.
- (9) An appeal by the prosecution under this section shall be by way of re-hearing, and on such an appeal the High Court may—
- (a) remand the person concerned in custody, or
  - (b) grant bail subject to such conditions (if any) as it thinks fit.
- (10) No appeal lies against the decision of the High Court on an appeal under this section.
- (11) In relation to a person under the age of 21, the reference in subsection (1) to an offence punishable by imprisonment is to be read as a reference to an offence which would be so punishable in the case of a person over that age.
- [<sup>F8</sup>(12) In this section—
- “extradition proceedings” means proceedings under the Extradition Act 2003;
- “magistrates' court” and “court”, in relation to extradition proceedings, mean a resident magistrate designated in accordance with section 67 or section 139 of the Extradition Act 2003;
- “prosecution”, in relation to extradition proceedings, means the person acting on behalf of the territory to which extradition is sought.]

#### Textual Amendments

- F1** S. 10(1A) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 29(2); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F2** Words in s. 10(3) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 29(3); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F3** Words in s. 10(4) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 29(4)(a); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F4** Words in s. 10(4) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 29(4)(b); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F5** Words in s. 10(5)(6) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 29(5); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F6** Words in s. 10(8) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 29(6)(a); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F7** Words in s. 10(8) omitted (15.1.2007) by virtue of [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 29(6)(b) ; S.I. 2006/3364, [art. 2\(d\)\(e\)](#) (and those words repealed (prosp.) by Sch. 15 Pt. 4 of that amending Act)
- F8** S. 10(12) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 29(7); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)

*Changes to legislation: There are currently no known outstanding effects for the Justice (Northern Ireland) Act 2004, Cross Heading: Bail. (See end of Document for details)*

**[<sup>F9</sup>10A Prosecution right of appeal against grant of bail by county court judge in extradition proceedings **N.I.****

- (1) Section 10 applies to the granting of bail by a county court judge in extradition proceedings as it applies to the granting of bail by a magistrates' court in such proceedings; and references in that section to a magistrates' court shall be construed accordingly.
- (2) In this section “extradition proceedings” has the same meaning as in section 10.]

**Textual Amendments**

**F9** S. 10A inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, Sch. 13 para. 30; S.I. 2006/3364, [art. 2\(d\)\(e\)](#)

**11 Bail under section 67 of the Terrorism Act 2000 **N.I.****

**F10** .....

**Textual Amendments**

**F10** S. 11 ceased to have effect (from the end of 31.7.2007) by virtue of [Justice \(Northern Ireland\) Act 2004 \(c. 4\)](#), [s. 11\(4\)\(a\)](#) (as amended by [Terrorism \(Northern Ireland\) Act 2006 \(c. 4\)](#), ss. 1(5), 5(3)) (with savings in [S.I. 2007/2259](#), [art. 4](#), Sch. para. 2)

**12 Bail to which Part II of the Criminal Justice (Northern Ireland) Order 2003 applies **N.I.****

- (1) Part II of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (bail grantable otherwise than under section 67 of the Terrorism Act 2000 (c. 11)) is amended as set out in subsections (2) to (4).
- (2) In Article 4(2) (definition of “surrender to custody”) at the end add “or
  - (c) into the custody of the governor of a prison at the time and place for the time being appointed for him to do so.”
- (3) In Article 5 (offence of absconding by person released on bail) for paragraph (3) substitute—
  - “(3) A person guilty of an offence paragraph (1) or (2) shall be liable—
    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or to a fine or to both.”
- (4) In Article 6 of that Order (arrest for absconding or breaking conditions of bail)—
  - (a) in paragraph (3) for “a duty to surrender to custody” substitute “a duty to surrender into the custody of a court”;
  - (b) after paragraph (3) insert—
    - “(3A) If, on an application made by a constable, a justice of the peace is satisfied that—

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- (a) there are reasonable grounds for believing that a person who is liable to arrest under paragraph (3) is to be found on the premises specified in the application; and
  - (b) any of the conditions specified in paragraph (3B) is satisfied, he may issue a warrant authorising a constable to enter those premises (if need be by force) and search them for the purpose of arresting that person.
- (3B) The conditions mentioned in paragraph (3A) are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) that entry to the premises will not be granted unless a warrant is produced;
  - (c) that the purpose of a search of the premises may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.”; and
- (c) after paragraph (5) insert—
- “(5A) Paragraphs (4) and (5) do not require a person to be brought before a magistrates’ court at any time when he is in hospital and is not well enough.”
- (5) In Article 29(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (right to claim trial by jury for summary offence if maximum term of imprisonment exceeds six months, subject to specified exceptions) after subparagraph (g) add—
- “(h) Article 5(1) or (2) of the Criminal Justice (Northern Ireland) Order 2003 (absconding by person admitted to bail)”.
- (6) Subsection (3) has no effect in relation to offences committed before it comes into force.

**Changes to legislation:**

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