
STATUTORY INSTRUMENTS

2017 No. 282

The Criminal Procedure (Amendment No. 2) Rules 2017

Amendments to the Criminal Procedure Rules 2015

- 3.** In Part 14 (Bail and custody time limits)—
- (a) in rule 14.1 (When this Part applies)—
- (i) renumber paragraph (2) as paragraph (3), and
- (ii) after paragraph (1) insert—
- “(2) Rules 14.20, 14.21 and 14.22 apply where a magistrates’ court can authorise an extension of the period for which a defendant is released on bail before being charged with an offence.”;
- (b) in the note to rule 14.1—
- (i) at the end of sub-paragraph (f) of the first paragraph omit “and”,
- (ii) at the end of sub-paragraph (g) of the first paragraph insert “and”, and
- (iii) after sub-paragraph (g) of the first paragraph insert—
- “(h) sections 47ZF and 47ZG of the Police and Criminal Evidence Act 1984(1)(extensions by court of pre-charge bail time limit).”;
- (c) for the heading to rule 14.2 (Exercise of court’s powers to which this Part applies) substitute “Exercise of court’s powers: general”;
- (d) in rule 14.2, after paragraph (6) insert—
- “(7) This rule does not apply on an application to a magistrates’ court to authorise an extension of pre-charge bail.”;
- (e) at the end of the note to rule 14.2 insert—
- “See also rule 14.20 (Exercise of court’s powers: extension of pre-charge bail).”;
- (f) in rule 14.4 (General duties of court officer)—
- (i) at the end of paragraph (1)(b)(i) omit “or”,
- (ii) at the end of paragraph (1)(b)(ii) insert “or”,
- (iii) after paragraph (1)(b)(ii) insert—
- “(iii) on an application to which rule 14.21 applies (Application to authorise extension of pre-charge bail).”;
- (iv) after paragraph (4) insert—
- “(5) Where the court determines without a hearing an application to which rule 14.21 applies (Application to authorise extension of pre-charge bail), the court officer must—
- (a) if the court allows the application, notify the applicant;

- (b) if the court refuses the application, notify the applicant and the defendant.”;
- (g) in rule 14.6 (Reconsideration of police bail by magistrates’ court) for paragraph (1) substitute—
 - “(1) This rule applies where—
 - (a) a party wants a magistrates’ court to reconsider a bail decision by a police officer after the defendant is charged with an offence;
 - (b) a defendant wants a magistrates’ court to reconsider a bail condition imposed by a police officer before the defendant is charged with an offence.”;
- (h) after rule 14.19 (Appeal against custody time limit decision) insert—

“EXTENSION OF BAIL BEFORE CHARGE

Exercise of court’s powers: extension of pre-charge bail

- 14.20.**—(1) The court must determine an application to which rule 14.21 (Application to authorise extension of pre-charge bail) applies—
- (a) without a hearing, subject to paragraph (2); and
 - (b) as soon as practicable, but as a general rule no sooner than the fifth business day after the application was served.
- (2) The court must determine an application at a hearing where—
- (a) if the application succeeds, its effect will be to extend the period for which the defendant is on bail to less than 12 months from the day after the defendant’s arrest for the offence and the court considers that the interests of justice require a hearing;
 - (b) if the application succeeds, its effect will be to extend that period to more than 12 months from that day and the applicant or the defendant asks for a hearing;
 - (c) it is an application to withhold information from the defendant and the court considers that the interests of justice require a hearing.
- (3) Any hearing must be in private.
- (4) Subject to rule 14.22 (Application to withhold information from the defendant), at a hearing the court may determine an application in the absence of—
- (a) the applicant;
 - (b) the defendant, if the defendant has had at least 5 business days in which to make representations.
- (5) If the court so directs, a party to an application may attend a hearing by live link or telephone.
- (6) The court must not authorise an extension of the period for which a defendant is on bail before being charged unless—
- (a) the applicant states, in writing or orally, that to the best of the applicant’s knowledge and belief—
 - (i) the application discloses all the information that is material to what the court must decide, and
 - (ii) the content of the application is true; or

- (b) the application includes a statement by an investigator of the suspected offence that to the best of that investigator's knowledge and belief those requirements are met.
- (7) Where the statement required by paragraph (6) is made orally—
 - (a) the statement must be on oath or affirmation, unless the court otherwise directs; and
 - (b) the court must arrange for a record of the making of the statement.
- (8) The court may shorten or extend (even after it has expired) a time limit imposed by this rule or by rule 14.21 (Application to authorise extension of pre-charge bail).

[Note. For the definition of 'defendant' for the purposes of this rule and rules 14.21 and 14.22, see rule 14.1(3).

Sections 47ZA and 47ZB of the Police and Criminal Evidence Act 1984(2) limit the period during which a defendant who has been arrested for an offence may be on bail after being released without being charged. That period ('the applicable bail period') is—

- (a) *3 months from the day after the day on which the defendant was arrested (the defendant's 'bail start date') in 'an SFO case' (that is, a case investigated by the Serious Fraud Office);*
- (b) *28 days from the defendant's bail start date in 'a standard case' (that is, 'an FCA case', meaning a case investigated by the Financial Conduct Authority, or any other non-SFO case).*

Under sections 47ZC and 47ZD of the 1984(3) Act, in a standard case the applicable bail period may be extended on the authority of a police officer of the rank of superintendent or above until the end of 3 months from the bail start date.

Under sections 47ZC and 47ZE of the Act(4), if the case is designated by a qualifying prosecutor as exceptionally complex (a 'designated case') the applicable bail period may be extended, in an SFO case, or further extended, in a standard case, on the authority of one of the senior officers listed in section 47ZE, until the end of 6 months from the bail start date.

Under section 47ZF of the Act(5), on an application made before the date on which the applicable bail period ends by a member of the Serious Fraud Office, a member of staff of the Financial Conduct Authority, a constable or a Crown Prosecutor, a magistrates' court may authorise an extension of that period—

- (a) *from a previous total of 3 months to a new total of 6 months or, if the investigation is unlikely to be completed or a police charging decision made within a lesser period, a new total of 9 months;*
- (b) *from a previous total of 6 months to a new total of 9 months or, if the investigation is unlikely to be completed or a police charging decision made within a lesser period, a new total of 12 months,*

where the conditions listed in that section are met.

Under section 47ZG of the Act(6), on a further such application (of which there may be more than one) a magistrates' court may authorise a further extension of the applicable

(2) 1984 c. 60; sections 47ZA and 47ZB were inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

(3) 1984 c. 60; sections 47ZC and 47ZD were inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

(4) 1984 c. 60; section 47ZE was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

(5) 1984 c. 60; section 47ZF was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

(6) 1984 c. 60; section 47ZG was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

bail period, on each occasion by a further 3 months or, if the investigation is unlikely to be completed or a police charging decision made within a lesser period, a further 6 months, where the conditions listed in that section are met.

Under section 47ZL of the Act⁽⁷⁾, the running of the applicable bail period does not begin (in the case of a first release on bail) or is suspended (in any other case) where—

- (a) the defendant is released on bail to await a charging decision by the Director of Public Prosecutions under section 37B of the Act; or*
- (b) following arrest for breach of such bail the defendant is again released on bail.*

The court's authority therefore is not required for an extension of an applicable bail period the running of which is postponed or suspended pending a Director's charging decision. However—

- (a) time runs in any period during which information requested by the Director is being obtained; and*
- (b) if the Director requests information less than 7 days before the applicable bail period otherwise would end then the running of that period is further suspended until the end of 7 days beginning with the day on which the Director's request is made.*

See also section 47ZI of the Police and Criminal Evidence Act 1984⁽⁸⁾(Sections 47ZF to 47ZH: proceedings in magistrates' courts). The requirement for the court except in specified circumstances to determine an application without a hearing is prescribed by that section. Under that section the court must comprise a single justice of the peace unless a hearing is convened, when it must comprise two or more justices.]

Application to authorise extension of pre-charge bail

14.21.—(1) This rule applies where an applicant wants the court to authorise an extension of the period for which a defendant is released on bail before being charged with an offence.

(2) The applicant must—

- (a) apply in writing before the date on which the defendant's pre-charge bail is due to end;
- (b) demonstrate that the applicant is entitled to apply as a constable, a member of staff of the Financial Conduct Authority, a member of the Serious Fraud Office or a Crown Prosecutor;
- (c) serve the application on—
 - (i) the court officer, and
 - (ii) the defendant; and
- (d) serve on the defendant, with the application, a form of response notice for the defendant's use.

(3) The application must specify—

- (a) the offence or offences for which the defendant was arrested;
- (b) the date on which the defendant's pre-charge bail began;
- (c) the date and period of any previous extension of that bail;

(7) 1984 c. 60; section 47ZL was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

(8) 1984 c. 60; section 47ZI was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

- (d) the date on which that bail is due to end;
 - (e) the conditions of that bail; and
 - (f) if different, the bail conditions which are to be imposed if the court authorises an extension, or further extension, of the period for which the defendant is released on pre-charge bail.
- (4) The application must explain—
- (a) the grounds for believing that, as applicable—
 - (i) further investigation is needed of any matter in connection with the offence or offences for which the defendant was released on bail, or
 - (ii) further time is needed for making a decision as to whether to charge the defendant with that offence or those offences;
 - (b) the grounds for believing that, as applicable—
 - (i) the investigation into the offence or offences for which the defendant was released on bail is being conducted diligently and expeditiously, or
 - (ii) the decision as to whether to charge the defendant with that offence or those offences is being made diligently and expeditiously; and
 - (c) the grounds for believing that the defendant's further release on bail is necessary and proportionate in all the circumstances having regard, in particular, to any conditions of bail imposed.
- (5) The application must—
- (a) indicate whether the applicant wants the court to authorise an extension of the defendant's bail for 3 months or for 6 months; and
 - (b) if for 6 months, explain why the investigation is unlikely to be completed or the charging decision made, as the case may be, within 3 months.
- (6) The application must explain why it was not made earlier where—
- (a) the application is made before the date on which the defendant's bail is due to end; but
 - (b) it is not likely to be practicable for the court to determine the application before that date.
- (7) A defendant who objects to the application must—
- (a) serve notice on—
 - (i) the court officer, and
 - (ii) the applicant,not more than 5 business days after service of the application; and
 - (b) in the notice explain the grounds of the objection.

[Note. The Practice Direction sets out forms of application and response notice for use in connection with this rule.]

See sections 47ZF (Applicable bail period: first extension of limit by the court), 47ZG (Applicable bail period: subsequent extensions of limit by the court) and 47ZJ (Sections 47ZF and 47ZG: late applications to magistrates' court) of the Police and Criminal Evidence Act 1984(9).

(9) 1984 c. 60; section 47ZJ was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

The time limit for making an application is prescribed by section 47ZF(2) and by section 47ZG(2) of the 1984 Act. It may be neither extended nor shortened. Under section 47ZJ(2) of the Act, if it is not practicable for the court to determine the application before the applicable bail period ends then the court must determine the application as soon as practicable. Under section 47ZJ(3), the applicable bail period is treated as extended until the application is determined. Under section 47ZJ(4), if it appears to the court that it would have been reasonable for the application to have been made in time for it to be determined by the court before the end of the applicable bail period then the court may refuse the application.]

Application to withhold information from the defendant

14.22.—(1) This rule applies where an application to authorise an extension of pre-charge bail includes an application to withhold information from the defendant.

(2) The applicant must—

- (a) omit that information from the part of the application that is served on the defendant;
- (b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and
- (c) in that other part, explain the grounds for believing that the disclosure of that information would have one or more of the following results—
 - (i) evidence connected with an indictable offence would be interfered with or harmed,
 - (ii) a person would be interfered with or physically injured,
 - (iii) a person suspected of having committed an indictable offence but not yet arrested for the offence would be alerted, or
 - (iv) the recovery of property obtained as a result of an indictable offence would be hindered.

(3) At any hearing of an application to which this rule applies—

- (a) the court must first determine the application to withhold information, in the defendant's absence and that of any legal representative of the defendant;
- (b) if the court allows the application to withhold information, then in the following sequence—
 - (i) the court must consider representations first by the applicant and then by the defendant, in the presence of both, and
 - (ii) the court may consider further representations by the applicant in the defendant's absence and that of any legal representative of the defendant, if satisfied that there are reasonable grounds for believing that information withheld from the defendant would be disclosed during those further representations.

(4) If the court refuses an application to withhold information from the defendant, the applicant may withdraw the application to authorise an extension of pre-charge bail.

[Note. See sections 47ZH and 47ZI(5), (6), (8) of the Police and Criminal Evidence Act 1984(10)(withholding sensitive information; proceedings in magistrates' courts: determination of applications to withhold sensitive information).]"; and

- (i) amend the table of contents correspondingly.