



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART II

BAIL

25 No bail for defendants charged with or convicted of homicide or rape after previous conviction of such offences.

- (1) A person who in any proceedings has been charged with or convicted of an offence to which this section applies in circumstances to which it applies [^{F1}shall be granted bail in those proceedings only if the court or, as the case may be, the constable considering the grant of bail is satisfied that there are exceptional circumstances which justify it].
- (2) This section applies, subject to subsection (3) below, to the following offences, that is to say—
 - (a) murder;
 - (b) attempted murder;
 - (c) manslaughter;
 - [^{F2}(d) rape under the law of Scotland or Northern Ireland;
 - (e) an offence under section 1 of the Sexual Offences Act 1956 (rape);
 - (f) an offence under section 1 of the Sexual Offences Act 2003 (rape);
 - (g) an offence under section 2 of that Act (assault by penetration);
 - (h) an offence under section 4 of that Act (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;
 - (i) an offence under section 5 of that Act (rape of a child under 13);
 - (j) an offence under section 6 of that Act (assault of a child under 13 by penetration);

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- (k) an offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
 - (l) an offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;
 - (m) an offence under section 31 of that Act (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
 - (n) an attempt to commit an offence within any of paragraphs (d) to (m).]
- (3) This section applies to a person charged with or convicted of any such offence only if he has been previously convicted by or before a court in any part of the United Kingdom of any such offence or of culpable homicide and, in the case of a previous conviction of manslaughter or of culpable homicide, if he was then sentenced to imprisonment or, if he was then a child or young person, to long-term detention under any of the relevant enactments.
- (4) This section applies whether or not an appeal is pending against conviction or sentence.
- (5) In this section—
- “conviction” includes—
 - (a) a finding that a person is not guilty by reason of insanity;
 - (b) a finding under section 4A(3) of the ^{M1}Criminal Procedure (Insanity) Act 1964 (cases of unfitness to plead) that a person did the act or made the omission charged against him; and
 - (c) a conviction of an offence for which an order is made ^{F3} . . . discharging [^{F4}the offender] absolutely or conditionally;
- and “convicted” shall be construed accordingly; and
- “the relevant enactments” means—
 - (a) as respects England and Wales, [^{F5}section 91 of the Powers of Criminal Courts (Sentencing) Act 2000];
 - [^{F6}(b) as respects Scotland, sections 205(1) to (3) and 208 of the Criminal Procedure (Scotland) Act 1995;]
 - (c) as respects Northern Ireland, section 73(2) of the ^{M2}Children and Young Persons Act (Northern Ireland) 1968.
- (6) This section does not apply in relation to proceedings instituted before its commencement.

Textual Amendments

- F1** Words in s. 25(1) substituted (30.9.1998) by 1998 c. 37, s. 56 (with Sch. 9); S.I. 1998/2327, art. 2(1) (n)
- F2** S. 25(2)(d)-(n) substituted (1.5.2004) for s. 25(2)(d)(e) by Sexual Offences Act 2003 (c. 42), ss. 141, 139, Sch. 6 para. 32(2); S.I. 2004/874, art. 2
- F3** Words in s. 25(5) repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 332, 336, Sch. 32 para. 67(a), Sch. 37 Pt. 7; S.I. 2005/950, art. 2, Sch. 1 paras. 23, 42(27), 44(4)(m) (subject to art. 2(2) and Sch. 2) (as amended by S.I. 2005/2122, art. 2)

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- F4** Words in s. 25(5) substituted (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 336, **Sch. 32 para. 67(b)**; S.I. 2005/950, **art. 2**, Sch. 1 paras. 23, 42(27) (subject to art. 2(2) and Sch. 2) (as amended by S.I. 2005/2122, art. 2)
- F5** S. 25(5): Words in para. (a) of the definition of “the relevant enactments” substituted (25.8.2000) by 2000 c. 6, ss. 165, 168, **Sch. 9 para. 160**
- F6** S. 25(5): sub-para.(b) in definition of “the relevant enactments” substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 93(2)** (with s. 4, Sch. 3)

Marginal Citations

- M1** 1964 c. 84.
M2 1968 c. 34 (N.I.).

26 No right to bail for persons accused or convicted of committing offence while on bail.

In Part I of Schedule 1 to the ^{M3}Bail Act 1976 (exceptions to right to bail for imprisonable offences)—

- (a) after paragraph 2, there shall be inserted the following paragraph—

“2A

he defendant need not be granted bail if—

- (a) the offence is an indictable offence or an offence triable either way; and
- (b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.”; and
- (b) in paragraph 9, after the words “paragraph 2” there shall be inserted the words “or 2A ”.

Marginal Citations

- M3** 1976 c. 63.

27 Power for police to grant conditional bail to persons charged.

(1) Part IV of the ^{M4}Police and Criminal Evidence Act 1984 (detention of persons, including powers of police to grant bail) shall have effect with the following amendments, that is to say, in section 47 (bail after arrest)—

- (a) in subsection (1), for the words after “in accordance with” there shall be substituted the words “sections 3, 3A, 5 and 5A of the Bail Act 1976 as they apply to bail granted by a constable”; and
- (b) after subsection (1) there shall be inserted the following subsection—

“(1A) The normal powers to impose conditions of bail shall be available to him where a custody officer releases a person on bail under section 38(1) above (including that subsection as applied by section 40(10) above) but not in any other cases.

In this subsection, “the normal powers to impose conditions of bail” has the meaning given in section 3(6) of the Bail Act 1976.”.

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(2) Section 3 of the Bail Act 1976 (incidents including conditions of bail in criminal proceedings) shall be amended as follows—

- (a) in subsection (6), the words “(but only by a court)” shall be omitted;
- (b) at the end of subsection (6) there shall be inserted— “ and, in any Act, “the normal powers to impose conditions of bail” means the powers to impose conditions under paragraph (a), (b) or (c) above ”;
- (c) after subsection (9), there shall be inserted the following subsection—

“(10) This section is subject, in its application to bail granted by a constable, to section 3A of this Act.”.

(3) After section 3 of the ^{M5}Bail Act 1976 there shall be inserted the following section—

“3A Conditions of bail in case of police bail.

- (1) Section 3 of this Act applies, in relation to bail granted by a custody officer under Part IV of the ^{M6}Police and Criminal Evidence Act 1984 in cases where the normal powers to impose conditions of bail are available to him, subject to the following modifications.
- (2) Subsection (6) does not authorise the imposition of a requirement to reside in a bail hostel or any requirement under paragraph (d).
- (3) Subsections (6ZA), (6A) and (6B) shall be omitted.
- (4) For subsection (8), substitute the following—
- (”) Where a custody officer has granted bail in criminal proceedings he or another custody officer serving at the same police station may, at the request of the person to whom it was granted, vary the conditions of bail; and in doing so he may impose conditions or more onerous conditions.”.
- (5) Where a constable grants bail to a person no conditions shall be imposed under subsections (4), (5), (6) or (7) of section 3 of this Act unless it appears to the constable that it is necessary to do so for the purpose of preventing that person from—
 - (a) failing to surrender to custody, or
 - (b) committing an offence while on bail, or
 - (c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person.
- (6) Subsection (5) above also applies on any request to a custody officer under subsection (8) of section 3 of this Act to vary the conditions of bail.”.

(4) The further amendments contained in Schedule 3 to this Act shall have effect.

Marginal Citations

- M4** 1984 c. 60.
- M5** 1976 c. 63.
- M6** 1984 c. 60.

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28 Police detention after charge.

(1) Section 38 of the Police and Criminal Evidence Act 1984 (which requires an arrested person charged with an offence to be released except in specified circumstances) shall be amended as follows.

(2) In subsection (1)(a), for sub-paragraphs (ii) and (iii) there shall be substituted the following sub-paragraphs—

“(ii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail;

(iii) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;

(iv) in the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of or damage to property;

(v) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or of a particular offence; or

(vi) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection;”.

(3) After subsection (2), there shall be inserted the following subsection—

“(2A) The custody officer, in taking the decisions required by subsection (1)(a) and (b) above (except (a)(i) and (vi) and (b)(ii)), shall have regard to the same considerations as those which a court is required to have regard to in taking the corresponding decisions under paragraph 2 of Part I of Schedule 1 to the ^{M7}Bail Act 1976.”.

(4) After subsection (7), there shall be inserted the following subsection—

“(7A) In this section “imprisonable offence” has the same meaning as in Schedule 1 to the Bail Act 1976.”.

Marginal Citations

M7 1976 c. 63.

29 Power for police to arrest for failure to answer to police bail.

(1) Part IV of the ^{M8}Police and Criminal Evidence Act 1984 (detention of persons, including powers of police to grant bail) shall be amended as follows.

(2) After section 46 there shall be inserted the following section—

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“46A Power of arrest for failure to answer to police bail.

- (1) A constable may arrest without a warrant any person who, having been released on bail under this Part of this Act subject to a duty to attend at a police station, fails to attend at that police station at the time appointed for him to do so.
- (2) A person who is arrested under this section shall be taken to the police station appointed as the place at which he is to surrender to custody as soon as practicable after the arrest.
- (3) For the purposes of—
 - (a) section 30 above (subject to the obligation in subsection (2) above), and
 - (b) section 31 above,
 an arrest under this section shall be treated as an arrest for an offence.”.

(3) ^{F7}

- (4) In consequence of the foregoing amendments—
 - (a) in section 37(1), paragraph (b) shall be omitted;
 - (b) in sections 41(9), 42(11) and 43(19), at the end, there shall be inserted the words “; but this subsection does not prevent an arrest under section 46A below.”;
 - (c) in section 47, subsection (5) shall be omitted;
 - (d) in section 47(6), for the words “is detained under subsection (5) above” there shall be substituted the words “ who has been granted bail and either has attended at the police station in accordance with the grant of bail or has been arrested under section 46A above is detained at a police station ”; and
 - (e) in section 47(7), at the end, there shall be inserted the words “ ; but this subsection does not apply to a person who is arrested under section 46A above or has attended a police station in accordance with the grant of bail (and who accordingly is deemed by section 34(7) above to have been arrested for an offence). ”.
- (5) This section applies whether the person released on bail was granted bail before or after the commencement of this section.

Textual Amendments	
F7	S. 29(3) repealed (20.1.2004) by Criminal Justice Act 2003 (c. 44) , ss. 332, 336, Sch. 37 Pt. 1 ; S.I. 2004/84, art. 2(2)(g)(ii)
Marginal Citations	
M8	1984 c. 60.

30 Reconsideration of decisions granting bail.

After the section 5A of the ^{M9}Bail Act 1976 inserted by Schedule 3 to this Act there shall be inserted the following section—

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“5B Reconsideration of decisions granting bail.

- (1) Where a magistrates’ court has granted bail in criminal proceedings in connection with an offence, or proceedings for an offence, to which this section applies or a constable has granted bail in criminal proceedings in connection with proceedings for such an offence, that court or the appropriate court in relation to the constable may, on application by the prosecutor for the decision to be reconsidered,—
 - (a) vary the conditions of bail,
 - (b) impose conditions in respect of bail which has been granted unconditionally, or
 - (c) withhold bail.
- (2) The offences to which this section applies are offences triable on indictment and offences triable either way.
- (3) No application for the reconsideration of a decision under this section shall be made unless it is based on information which was not available to the court or constable when the decision was taken.
- (4) Whether or not the person to whom the application relates appears before it, the magistrates’ court shall take the decision in accordance with section 4(1) (and Schedule 1) of this Act.
- (5) Where the decision of the court on a reconsideration under this section is to withhold bail from the person to whom it was originally granted the court shall—
 - (a) if that person is before the court, remand him in custody, and
 - (b) if that person is not before the court, order him to surrender himself forthwith into the custody of the court.
- (6) Where a person surrenders himself into the custody of the court in compliance with an order under subsection (5) above, the court shall remand him in custody.
- (7) A person who has been ordered to surrender to custody under subsection (5) above may be arrested without warrant by a constable if he fails without reasonable cause to surrender to custody in accordance with the order.
- (8) A person arrested in pursuance of subsection (7) above shall be brought as soon as practicable, and in any event within 24 hours after his arrest, before a justice of the peace for the petty sessions area in which he was arrested and the justice shall remand him in custody.

In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.
- (9) Magistrates’ court rules shall include provision—
 - (a) requiring notice of an application under this section and of the grounds for it to be given to the person affected, including notice of the powers available to the court under it;
 - (b) for securing that any representations made by the person affected (whether in writing or orally) are considered by the court before making its decision; and

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- (c) designating the court which is the appropriate court in relation to the decision of any constable to grant bail.”.

Marginal Citations

M9 1976 c. 63.

Status:

Point in time view as at 02/05/2006.

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