

INTERNATIONAL CRIMINAL COURT ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Arrest and Delivery of Persons

Sections 16 to 18: Bail and custody

38. Article 59 of the ICC Statute deals with the question of interim release pending surrender (i.e. bail). The Article provides that a person arrested at the request of the ICC has the right to apply for bail. It requires that the Pre-Trial Chamber of the ICC be notified of any application for bail and that the authority deciding the application give full consideration to any recommendations made by the Pre-Trial Chamber, including any on measures to prevent the escape of the person, before making its decision. Article 59.4 further requires that the authority consider whether, given the gravity of the alleged crime, there are urgent and exceptional circumstances to justify bail and whether necessary safeguards exist to ensure that the State can fulfil its duty to surrender the person to the ICC.
39. [Sections 16](#) and [18](#) are intended to implement these provisions of Article 59. Section 16 provides that a court may grant bail if an application is made. Section 18(1) and (2) provide for compulsory consultation with the ICC. Section 18(3) requires the court to consider the matters specified in Article 59.4. Section 16(2) applies the provisions of the Bail Act 1976 to proceedings under this part in England and Wales as if they were proceedings against a fugitive offender. This ensures that, in view of the very serious nature of the crimes involved, the court is obliged to take into account all of the relevant factors surrounding the bail application with no presumption in favour of, or against, granting bail.
40. [Section 17](#) covers various eventualities where a person has been granted bail in England and Wales. *Subsections (3) to (5)* deal with a situation in which a person, having been granted bail, surrenders to the custody of a constable shortly before the end of the period of remand. If the constable learns that the end of that period will be unexpectedly delayed, he will re-bail the person and set a new date for the person to surrender to custody. If the person fails to surrender at the appointed time, then the court which originally granted bail may issue an arrest warrant and, once the person is arrested, will reconsider whether bail is appropriate.