

JUSTICE (NORTHERN IRELAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY

Section 10: Prosecution right of appeal against grant of bail by magistrates' court

28. This section creates a prosecution right of appeal to the High Court against the granting of bail by the magistrates' court. At the moment there is no mechanism available for the prosecution to appeal against the grant of bail. It is important that there are adequate safeguards against the possibility of mistakes being made. The granting of bail may only be appealed if a person is charged with, or convicted of, an offence punishable by imprisonment to ensure that only in the most serious cases can a person be denied their liberty by virtue of an appeal.
29. *Subsection (2)* provides that the grant of bail may only be appealed where the prosecution is conducted by or on behalf of the Director of Public Prosecutions, or on behalf of the Police Service of Northern Ireland: as a consequence appeals will only be possible where a professional prosecutor is involved in the matter. *Subsection (3)* states that an appeal may only be made if the prosecution made representations against the granting of bail before bail was granted.
30. *Subsection (4)* provides that oral notice of an intention to appeal must be given to the magistrates' court at the conclusion of the proceedings at which bail is granted and before the person concerned is released from custody. *Subsection (5)* provides that written notice must be given to the magistrates' court and the person concerned within two hours of the conclusion of the proceedings. *Subsection (6)* requires the magistrates' court to remand the person concerned in custody from when it receives the oral notice of the appeal until a decision on the appeal is taken. Where the prosecution fails to comply with *subsection (5)*, the appeal shall be deemed to have been disposed of (*subsection (7)*). The hearing of the appeal must be commenced with 48 hours (subject to limited exceptions) of the giving of oral notice (*subsection (8)*). The purpose of these strict time limits is to ensure that if an appeal is unsuccessful a person is only further detained for as short a time as possible.
31. *Subsection (9)* permits an appeal by the prosecution 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. 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 (*subsection (11)* refers). Without such a provision the section would only cover those aged over 21, because those under 21 cannot be sentenced to imprisonment by virtue of the [Treatment of Offenders Act \(Northern Ireland\) 1968 \(c.29\)](#).