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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 14**

**BAIL AND CUSTODY TIME LIMITS**

*EXTENSION OF BAIL BEFORE CHARGE*

**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; and
- (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(1) (withholding sensitive information; proceedings in magistrates' courts: determination of applications to withhold sensitive information).]

**Summary of the general entitlement to bail and of the exceptions**

The court must consider bail whenever it can order the defendant's detention pending trial or sentencing, or in an extradition case, and whether an application is made or not. Under section 4 of the Bail Act 1976(2), the general rule, subject to exceptions, is that a defendant must be granted bail. Under Part IIA of Schedule 1 to the Act(3), if the court decides not to grant the defendant bail then at each subsequent hearing the court must consider whether to grant bail.

Section 3 of the Bail Act 1976(4) allows the court, before granting bail, to require a surety or security to secure the defendant's surrender to custody; and allows the court, on granting bail, to impose such requirements as appear to the court to be necessary—

- (a) to secure that the defendant surrenders to custody;
- (b) to secure that the defendant does not commit an offence while on bail;
- (c) to secure that the defendant does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to the defendant or any other person;
- (d) for the defendant's own protection or, if a child or young person, for the defendant's welfare or in the defendant's own interests;
- (e) to secure the defendant's availability for the purpose of enabling enquiries or a report to be made to assist the court in dealing with the defendant for the offence;
- (f) to secure that before the time appointed for surrender to custody the defendant attends an interview with a legal representative.

Under section 3 of the Bail Act 1976, a person granted bail in criminal proceedings is under a duty to surrender to custody as required by that bail. Under section 6 of the Act, such a person who fails without reasonable cause so to surrender commits an offence and, under section 7, may be arrested.

Exceptions to the general right to bail are listed in Schedule 1 to the Bail Act 1976(5). They differ according to the category of offence concerned. Under section 4(2B) of the 1976 Act(6), in an

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- (1) 1984 c. 60; sections 47ZH and 47ZI were inserted by section 63 of the Policing and Crime Act 2017 (c. 3).
  - (2) 1976 c. 63; section 4 was amended by section 154 of, and paragraph 145 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), section 168 of, and paragraphs 32 and 33 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Criminal Justice and Court Services Act 2000 (c. 43), sections 198 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 304 of, and paragraphs 20 and 22 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), section 42 of, and paragraph 34 of Schedule 13 to, the Police and Justice Act 2006 (c. 48), sections 6 and 148 of, and paragraphs 23 and 102 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 19 of Schedule 7, and Schedule 8, to the Policing and Crime Act 2009 (c. 26).
  - (3) 1976 c. 63; Schedule 1, Part IIA was added by section 154 of the Criminal Justice Act 1988 (c. 33).
  - (4) 1976 c. 63; section 3 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 34 of the Mental Health (Amendment) Act 1982 (c. 51), paragraph 46 of Schedule 4 to the Mental Health Act 1983 (c. 20), section 15 of, and paragraph 9 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 131 of the Criminal Justice Act 1988 (c. 33), sections 27 and 168 of, and paragraph 12 of Schedule 9 and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 54 and 120 of, and paragraph 37 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), paragraph 51 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 131 of the Criminal Justice and Police Act 2001 (c. 16), sections 13 and 19 of, and paragraph 48 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), paragraphs 33 and 34 of Schedule 21 to the Legal Services Act 2007 (c. 29) and paragraphs 1 and 2 of Schedule 11, paragraphs 1 and 2 of Schedule 12, to the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 1 to 4 of Schedule 11, and paragraphs 14 and 15 of Schedule 12, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
  - (5) 1976 c. 63; Schedule 1 was amended by section 34 of the Mental Health (Amendment) Act 1982 (c. 51), sections 153, 154 and 155 of the Criminal Justice Act 1988 (c. 33), paragraph 22 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), section 26 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 38 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 54 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 129 and 137 of, and Schedule 7 to, the Criminal Justice and Police Act 2001 (c. 16), section 198 of the Extradition Act 2003 (c. 41), sections 13, 14, 15, 19 and 20 of, and paragraphs 20 and 23 of Schedule 32 and paragraphs 1 and 3 of Schedule 36

*extradition case there is no general right to bail where the defendant is alleged to have been convicted in the territory requesting extradition.*

*Under Part I of Schedule 1 to the 1976 Act, where the offence is punishable with imprisonment, and is not one that can be tried only in a magistrates' court, or in an extradition case—*

- (a) the defendant need not be granted bail if the court is satisfied that—*
  - (i) there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice,*
  - (ii) there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (within the meaning of section 33 of the Family Law Act 1996(7)), or cause that person to fear injury,*
  - (iii) the defendant should be kept in custody for his or her own protection or welfare, or*
  - (iv) it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for the court to take the decisions required;*
- (b) the defendant need not be granted bail if it appears to the court that the defendant was on bail at the time of the offence (this exception does not apply in an extradition case);*
- (c) the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail;*
- (d) the defendant need not be granted bail if in custody pursuant to a sentence;*
- (e) the defendant need not be granted bail if it appears to the court that it would be impracticable to complete enquiries or a report for which the case is to be adjourned without keeping the defendant in custody;*
- (f) the defendant may not be granted bail if charged with murder, unless the court is of the opinion that there is no significant risk of the defendant committing an offence while on bail that would, or would be likely to, cause physical or mental injury to some other person;*
- (g) the defendant in an extradition case need not be granted bail if he or she was on bail on the date of the alleged offence and that offence is not one that could be tried only in a magistrates' court if it were committed in England or Wales.*

*Exceptions (a)(i), (b) and (c) do not apply where—*

- (a) the defendant is 18 or over;*
- (b) the defendant has not been convicted of an offence in those proceedings; and*
- (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in those proceedings.*

*In deciding whether an exception to the right to bail applies the court must have regard to any relevant consideration, including—*

- (a) the nature and seriousness of the offence, and the probable method of dealing with the defendant for it;*

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to, the Criminal Justice Act 2003 (c. 44), paragraph 40 of the Schedule to S.I. 2005/886, paragraph 78 of Schedule 16, and Schedule 17, to the Armed Forces Act 2006 (c. 52), paragraphs 1, 4, 5 and 6 of Schedule 12 to the Criminal Justice and Immigration Act 2008 (c. 4), section 114 of the Coroners and Justice Act 2009 (c. 25) and paragraphs 10 to 31 of Schedule 11, and paragraphs 14 and 17 of Schedule 12, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(6) 1976 c. 63; section 4(2B) was inserted by section 198 of the Extradition Act 2003 (c. 41) and amended by paragraph 34 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(7) 1996 c. 27; section 33 was amended by section 82 of, and paragraph 4 of Schedule 9 to, the Civil Partnership Act 2004 (c. 33).

- (b) *the character, antecedents, associations and community ties of the defendant;*
- (c) *the defendant's record of fulfilling obligations imposed under previous grants of bail; and*
- (d) *except where the case is adjourned for enquires or a report, the strength of the evidence of the defendant having committed the offence.*

*Under Part IA of Schedule 1 to the 1976 Act, where the offence is punishable with imprisonment, and is one that can be tried only in a magistrates' court—*

- (a) *the defendant need not be granted bail if it appears to the court that—*
  - (i) *having previously been granted bail in criminal proceedings, the defendant has failed to surrender as required and, in view of that failure, the court believes that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, or*
  - (ii) *the defendant was on bail on the date of the offence and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail;*
- (b) *the defendant need not be granted bail if the court is satisfied that—*
  - (i) *there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to some other person, or cause some other person to fear such injury,*
  - (ii) *the defendant should be kept in custody for his or her own protection or welfare, or*
  - (iii) *it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for the court to take the decisions required;*
- (c) *the defendant need not be granted bail if in custody pursuant to a sentence;*
- (d) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice.*

*Exceptions (a) and (d) do not apply where—*

- (a) *the defendant is 18 or over;*
- (b) *the defendant has not been convicted of an offence in those proceedings; and*
- (c) *it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in those proceedings.*

*Under Part II of Schedule 1 to the 1976 Act, where the offence is not punishable with imprisonment—*

- (a) *the defendant need not be granted bail if it appears to the court that having previously been granted bail in criminal proceedings, the defendant has failed to surrender as required and, in view of that failure, the court believes that, if released on bail (with or without conditions), the defendant would fail to surrender to custody;*
- (b) *the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his or her own protection or welfare;*
- (c) *the defendant need not be granted bail if in custody pursuant to a sentence;*
- (d) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with*

*or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice;*

- (e) the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (within the meaning of section 33 of the Family Law Act 1996), or to cause that person to fear such injury.*

*Exceptions (a) and (d) apply only where—*

- (a) the defendant is under 18; and*
- (b) the defendant has been convicted in those proceedings.*

*Further exceptions to the general right to bail are set out in section 25 of the Criminal Justice and Public Order Act 1994(8), under which a defendant charged with murder, attempted murder, manslaughter, rape or another sexual offence specified in that section, and who has been previously convicted of such an offence, may be granted bail only if there are exceptional circumstances which justify it.*

***Requirements that may be monitored and enforced in another European Union member State***

*Under Article 8(1) of EU Council Framework Decision 2009/829/JHA of 23<sup>rd</sup> October, 2009, on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the following are the requirements that may be monitored and enforced in a European Union member State ('the monitoring State') other than the state in which they were imposed as a condition of bail—*

- (a) an obligation for the person to inform the competent authority in the monitoring State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;*
- (b) an obligation not to enter certain localities, places or defined areas in the issuing or monitoring State;*
- (c) an obligation to remain at a specified place, where applicable during specified times;*
- (d) an obligation containing limitations on leaving the territory of the monitoring State;*
- (e) an obligation to report at specified times to a specific authority;*
- (f) an obligation to avoid contact with specific persons in relation to the offence or offences allegedly committed.*

*Under Article 8(2) of the Framework Decision, other measures that a monitoring State may be prepared to monitor may include—*

- (a) an obligation not to engage in specified activities in relation to the offence or offences allegedly committed, which may include involvement in a specified profession or field of employment;*
- (b) an obligation not to drive a vehicle;*
- (c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;*

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**(8)** 1994 c. 33; section 25 was amended by section 56 of the Crime and Disorder Act 1998 (c. 37), paragraph 160 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 32 of Schedule 6 to the Sexual Offences Act 2003 (c. 42), paragraph 67 of Schedule 32 and Schedule 37 to the Criminal Justice Act 2003 (c. 44), article 16 of S.I. 2008/1779, paragraph 3 of Schedule 17, and Schedule 23, to the Coroners and Justice Act 2009 (c. 25) and paragraph 33 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (d) *an obligation to undergo therapeutic treatment or treatment for addiction; or*
- (e) *an obligation to avoid contact with specific objects in relation to the offence or offences allegedly committed.*

**Grounds for refusing to monitor and enforce a supervision measure imposed in another European Union member State**

*Under Schedule 6 to the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(9), the grounds for refusal are—*

- (a) *the certificate requesting monitoring under the Framework Decision—*
  - (i) *is incomplete or obviously does not correspond to the decision on supervision measures, and*
  - (ii) *is not completed or corrected within a period specified by the court;*
- (b) *where the defendant subject to the decision on supervision measures is lawfully and ordinarily resident in England and Wales, the defendant has not consented to return there with a view to the supervision measures being monitored there under the Framework Decision;*
- (c) *where the defendant subject to the decision on supervision measures is not lawfully and ordinarily resident in England and Wales, the defendant—*
  - (i) *has not asked for a request to be made for monitoring of the supervision measures under the Framework Decision by a competent authority in in England and Wales, or*
  - (ii) *has asked for such a request to be made but has not given adequate reasons as to why it should be made;*
- (d) *the certificate includes measures other than those referred to in Article 8 of the Framework Decision (see the list above);*
- (e) *recognition of the decision on supervision measures would contravene the principle of ne bis in idem;*
- (f) *the decision on supervision measures was based on conduct that would not constitute an offence under the law of England and Wales if it occurred there (with the exception of some specified categories of offence);*
- (g) *the decision was based on conduct where, under the law of England and Wales—*
  - (i) *the criminal prosecution of the conduct would be statute-barred, and*
  - (ii) *the conduct falls within the jurisdiction of England and Wales;*
- (h) *the decision on supervision measures was based on conduct by a defendant who was under the age of 10 when the conduct took place;*
- (i) *the conduct on which the decision on supervision measures was based is such that—*
  - (i) *if there was a breach of the supervision measures, and*
  - (ii) *a warrant was issued by the issuing State for the arrest of the defendant subject to the decision*

*the defendant would have to be discharged at an extradition hearing under the Extradition Act 2003;*
- (j) *it appears that the decision on supervision measures was in fact made for the purpose of punishing the defendant on account of the defendant's race, ethnic origin, religion, nationality, language, gender, sexual orientation or political opinions.*

