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## STATUTORY INSTRUMENTS

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### 2003 No. 1247

## The Criminal Justice (Northern Ireland) Order 2003

### PART II

#### BAIL IN CRIMINAL PROCEEDINGS

##### **Bail**

- 3.—(1) In this Part bail means bail grantable under the law for the time being in force—
- (a) in or in connection with proceedings for an offence to a person who is accused or convicted of the offence, or
  - (b) in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued.
- (2) In paragraph (1)—
- bail does not include bail grantable under section 67 of the Terrorism Act 2000 (c. 11);
  - law includes common law;
  - offence includes an alleged offence.
- (3) For the purposes of paragraph (1) any of the following shall be treated as a conviction—
- (a) a finding of guilt;
  - (b) a finding under Article 51 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) (remand for inquiry into physical or mental condition) that the person charged did the act or made the omission charged;
  - (c) a finding mentioned in Article 50A(1) of the Mental Health (Northern Ireland) Order 1986 (NI 4) (not guilty by reason of insanity, or unfit to be tried etc.);
  - (d) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally.
- (4) This Article applies—
- (a) whether the offence was committed in Northern Ireland or elsewhere; and
  - (b) whether it is an offence under the law of Northern Ireland or of any other country or territory.

##### **Surrender to custody**

- 4.—(1) A person released on bail shall be under a duty to surrender to custody.
- (2) In this Part—
- surrender to custody means, in relation to a person released on bail, surrendering himself (according to the requirements of the grant of bail)—
- (a) into the custody of the court at the time and place for the time being appointed for him to do so; or

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- (b) at the police station and at the time appointed for him to do so<sup>[F1]</sup> or]
- (c) <sup>[F1]</sup>into the custody of the governor of a prison at the time and place for the time being appointed for him to do so.]

**F1** 2004 c. 4

### Offence of absconding by person released on bail

5.—(1) If a person who has been released on bail fails without reasonable cause to surrender to custody, he shall be guilty of an offence.

(2) If a person who—

- (a) has been released on bail, and
- (b) has, with reasonable cause, failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

<sup>[F2]</sup>(3) A person guilty of an offence paragraph (1) or (2) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or to a fine or to both.]

**F2** 2004 c. 4

### Arrest for absconding or breaking conditions of bail

6.—(1) If a person who has been released on bail and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for him to do so, the court may issue a warrant for his arrest.

(2) If a person who has been released on bail absents himself from the court at any time after he has surrendered into the custody of the court and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest; but no warrant shall be issued under this paragraph where that person is absent in accordance with permission given to him by or on behalf of the court.

(3) A constable may arrest without warrant any person who has been released on bail and is under<sup>[F3]</sup> a duty to surrender into the custody of a court]

- (a) if the constable has reasonable grounds for believing that that person is not likely to surrender to custody;
- (b) if the constable has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or
- (c) in a case where that person was released on bail with one or more surety or sureties, if a surety notifies a constable in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.

<sup>[F3]</sup>(3A) If, on an application made by a constable, a justice of the peace is satisfied that—

(a) there are reasonable grounds for believing that a person who is liable to arrest under paragraph (3) is to be found on the premises specified in the application; and  
(b) any of the conditions specified in paragraph (3B) is satisfied,  
he may issue a warrant authorising a constable to enter those premises (if need be by force) and search them for the purpose of arresting that person.

(3B) The conditions mentioned in paragraph (3A) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that entry to the premises will not be granted unless a warrant is produced;
- (c) that the purpose of a search of the premises may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.]

(4) A person who is arrested under paragraph (3) shall be brought before a magistrates' court as soon as practicable after the arrest and in any event not later than the next day following the day on which he is arrested.

(5) Where the day next following the day on which that person is arrested is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court not later than the next following day which is not one of those days.

[<sup>F3</sup>(5A) Paragraphs (4) and (5) do not require a person to be brought before a magistrates' court at any time when he is in hospital and is not well enough.]

(6) Where a person is brought before a magistrates' court under paragraph (4) the court—

- (a) if of the opinion that he—
  - (i) is not likely to surrender to custody, or
  - (ii) has broken or is likely to break any condition of his bail,may remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions; or
- (b) if not of that opinion, shall grant him bail subject to the same conditions (if any) as were originally imposed.

(7) Paragraph (6) is subject to Articles 12 and 13 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) (release on bail or remand in custody of child).

**F3** 2004 c. 4

### Cases where person not to be released from police detention

**7.** In Article 39 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) (duties of custody officer after charge)—

- (a) in paragraph (1)(a)—
  - (i) in head (ii) the words for his own protection or and the word or where it last occurs shall cease to have effect;
  - (ii) at the end of head (iii) there shall be added  
“or  
(iv) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection;”;
- (b) after paragraph (2) there shall be inserted the following paragraph—

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“(2A) The custody officer, in taking the decisions required by paragraph (1)(a) and (b) (except (a)(i) and (iv) and (b)(ii)), shall have regard to such of the following considerations as appear to him to be relevant—

- (a) the nature and seriousness of the offence;
- (b) the character, antecedents, associations and community ties of the person;
- (c) the person's record as respects the fulfilment of his obligations under previous grants of bail, and
- (d) the strength of the evidence of the person's having committed the offence,

as well as to any other considerations which appear to be relevant.” .

### **Bail under Part V of the Police and Criminal Evidence (Northern Ireland) Order 1989**

**8.—(1)** In Article 48 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) (bail after arrest)—

- (a) in paragraph (1) (duty to appear or attend at appointed time), for the words from the beginning to subject to there shall be substituted the words The duty of a person who is released on bail under this Part to surrender to custody under Article 4 of the Criminal Justice (Northern Ireland) Order 2003 consists of;

- (b) after paragraph (2) (appointed time) there shall be inserted the following paragraph—

“(2A) The custody officer shall make a record of the time and place appointed under paragraph (1)(a) or (b) and if the person released on bail so requests, the custody officer shall cause a copy of the record to be given to that person as soon as practicable after the record is made.” ;

- (c) for paragraphs (3) to (5) (recognisances) there shall be substituted the following paragraphs—

“(3) No recognisance for his surrender to custody shall be taken from him.

(3A) Except as provided by this Article—

- (a) no security for his surrender to custody shall be taken from him;
- (b) he shall not be required to provide a surety or sureties for his surrender to custody; and
- (c) no other requirement shall be imposed on him as a condition of bail.

(3B) He may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody.

(3C) He may be required, before release on bail, to give security for his surrender to custody; and the security may be given by him or on his behalf.

(3D) He may be required to comply, before release on bail under Article 39(1) or later, with such requirements as appear to the custody officer to be necessary to secure that—

- (a) he surrenders to custody;
- (b) he does not commit an offence while on bail; and
- (c) he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(3E) Where a custody officer has granted bail he or another custody officer serving at the same police station may, at the request of the person to whom it is granted, vary the conditions of bail; and in doing so may impose conditions or more onerous conditions.

(3F) Where a custody officer grants bail to a person no conditions shall be imposed under paragraph (3B), (3C), (3D) or (3E) unless it appears to the custody officer that it is necessary to do so for the purpose of preventing that person from—

- (a) failing to surrender to custody;
- (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.

(3G) Paragraph (3F) also applies on any request to a custody officer under paragraph (3E) to vary the conditions of bail.

(3H) Where a custody officer varies any conditions of bail or imposes conditions under paragraph (3B), (3C), (3D) or (3E), he shall make a record of the decision and shall, at the request of the person to whom bail was granted, cause a copy of the record to be given to that person as soon as practicable after the record is made.” ;

(d) in paragraph (6) the words (with or without entering into a recognisance) shall cease to have effect.

(2) After that Article there shall be inserted the following Article—

**“Forfeiture of security**

**48A.**—(1) Where a person has given security in pursuance of Article 48(3C), and a magistrates' court is satisfied that he failed to surrender to custody then, unless it appears to the court that he had reasonable cause for his failure, the court may order the forfeiture of the security.

(2) If a court orders the forfeiture of a security under paragraph (1), the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(3) An order under paragraph (1) shall, unless previously revoked, take effect at the end of 21 days beginning with the day on which it is made.

(4) A court which has ordered the forfeiture of a security under paragraph (1) may, if satisfied on an application by or on behalf of the person who gave it that he did have reasonable cause for his failure to surrender to custody, by order remit the forfeiture or declare that it extends to such amount less than the full value of the security as it thinks fit to order.

(5) An application under paragraph (4) may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that the prosecution was given reasonable notice of the applicant's intention to make it.”.

**Power to grant bail where police bail has been granted**

**9.** After Article 132 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) (powers of resident magistrate or other justice in relation to persons not released on bail), there shall be inserted the following Article—

**“Power to grant bail where police bail has been granted**

**132A.**—(1) Where a custody officer—

- (a) grants bail to any person under Part V of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) and imposes conditions; or
- (b) varies, in relation to any person, conditions of bail under Article 48(3E) of that Order,

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a magistrates' court may, on application by or on behalf of that person, grant bail or vary the conditions.

(2) On an application under paragraph (1), the court, if it grants bail and imposes conditions or if it varies the conditions, may impose more onerous conditions.

(3) On determining an application under paragraph (1), the court shall remand the applicant in custody or on bail in accordance with the determination and, where the court withholds bail or grants bail, the grant of bail by the custody officer shall lapse.”.

### **Reconsideration of decisions granting bail**

10. After Article 133 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) (conditions on admission to bail) there shall be inserted the following Article—

#### **“Reconsideration of decisions granting bail**

**133A.**—(1) Where a magistrates' court has granted bail in connection with an offence, or proceedings for an offence, to which this Article applies, or a custody officer has granted bail in connection with proceedings for an offence, a magistrates' court may, on an application by the prosecution for the decision to be reconsidered—

- (a) vary or rescind the conditions of bail or impose further conditions;
- (b) impose conditions in respect of bail which has been granted unconditionally, or
- (c) withhold bail.

(2) This Article applies to offences which are punishable on conviction on indictment (whether or not punishable only on conviction on indictment).

(3) No application for the reconsideration of a decision under this Article shall be made unless it is based on information which was not available to the court or custody officer when the decision was taken.

(4) Where the decision of the court on a reconsideration under this Article 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; or
- (b) if that person is not before the court, order him to surrender himself forthwith into the custody of the court.

(5) Where a person surrenders himself into the custody of the court in compliance with an order under paragraph (4), the court shall remand him in custody.

(6) A person who has been ordered to surrender to custody under paragraph (4) may be arrested without warrant by a constable if he fails without reasonable cause to surrender to custody in accordance with the order.

(7) A person arrested in pursuance of paragraph (6) shall be brought before a magistrates' court as soon as practicable after the arrest and in any event not later than the day next following the day on which he is arrested and the court shall remand him in custody.

(8) Where the day next following the day on which that person is arrested is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court not later than the next following day which is not one of those days.

(9) Magistrates' courts rules shall include provision—

- (a) requiring notice of an application under this Article and of the grounds for it to be given to the person affected, including notice of the powers available to the court under it; and

(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.

(10) In this Article custody officer includes an officer who is performing the functions of a custody officer by virtue of Article 37(4) or (7) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12).”

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**Commencement Orders yet to be applied to the The Criminal Justice (Northern Ireland) Order 2003**

Commencement Orders bringing legislation that affects this Order into force:

- [S.R. 2016/387 art. 2 commences \(2015 c. 9 \(N.I.\)\)](#)