

CRIMINAL JUSTICE ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 : Bail

Section 13: Grant and conditions of bail

144. *Subsection (1)* makes a number of changes to section 3(6) of the Bail Act 1976 to enable bail conditions to be imposed for a defendant's own protection or welfare, in the same circumstances that he or she might have been remanded in custody for that purpose.
145. *Subsection (2)* makes similar changes to section 3A(5), and *subsection (3)* to paragraph 8(1) of Part 1 of Schedule 1 to the 1976 Act.
146. *Subsection (4)* amends paragraph 5 of Part 2 of Schedule 1 to the Bail Act 1976 so that, where a defendant charged with a non-imprisonable offence is arrested under section 7, bail may be refused only if the court is satisfied that there are substantial grounds for believing that if released on bail (whether subject to conditions or not) he or she would fail to surrender to custody, commit an offence whilst on bail, or interfere with witnesses or otherwise obstruct the course of justice.

Section 14: Offences committed on bail

147. *Subsection (1)* requires the court to refuse bail to an adult defendant who was on bail in criminal proceedings at the date of the offence, unless the court is satisfied that there is no significant risk that he would commit an offence if released on bail. This replaces paragraph 2A of Part I of Schedule 1 of the Bail Act 1976 (which provides that a defendant need not be granted bail if he was on bail at the time of the alleged offence).
148. *Subsection (2)* adds a new paragraph 9AA to Part 1 of Schedule 1 to the Bail Act 1976, which provides that where a defendant under the age of 18 is on bail in criminal proceedings on the date an offence was committed particular weight can be given to this fact when the court is deciding whether he or she would be likely to re-offend if released on bail.

Section 15: Absconding by persons released on bail

149. *Subsection (1)* requires the court to refuse bail to an adult defendant who failed without reasonable cause to surrender to custody in answer to bail in the same proceedings, unless the court is satisfied that there is no significant risk that he would so fail if released.
150. *Subsection (2)* requires the court, in the case of defendants under 18, to give particular weight to the fact that they have failed to surrender to bail, in assessing the risk of future absconding.
151. *Subsection (3)* disapplies section 127 of the Magistrates' Court Act 1980 (which prevents summary proceedings from being instituted more than 6 months after the commission of an offence) in respect of offences under section 6 of the Bail Act, and

instead provides that such an offence may not be tried unless an information is laid either within 6 months of the commission of the offence, or within three months of the defendant's surrender to custody, arrest or court appearance in respect of that offence. This will ensure that a defendant cannot escape being prosecuted for the Bail Act offence merely by succeeding in absconding for more than six months.

Section 16: Appeal to Crown Court

152. *Section 16* creates a new right of appeal to the Crown Court against the imposition by magistrates of certain conditions of bail. The conditions which may be challenged in this way are requirements relating to residence, provision of a surety or giving a security, curfew, electronic monitoring or contact. This complements the removal by *Section 17* of the existing High Court power to entertain such appeals.

Section 17: Appeals to the High Court

153. *Section 17* abolishes the jurisdiction of the High Court in respect of bail where it duplicates that of the Crown Court.

Section 18: Appeal by prosecution

154. *Section 18* amends section 1 of the Bail (Amendment) Act 1993 so that the prosecution's right of appeal to the Crown Court against a decision by magistrates to grant bail is extended to cover all imprisonable offences.

Section 19: Drug users: restriction on bail

155. Evidence suggests that there is a link between drug addiction and offending. In addition, it is widely accepted that many abusers of drugs fund their misuse through acquisitive crime. There is thus a real concern that if such offenders who have been charged with an imprisonable offence are placed on bail, they will merely re-offend in order to fund their drug use.
156. Under this Section, an alleged offender aged 18 or over who has been charged with an imprisonable offence will not be granted bail (unless the court is satisfied that there is no significant risk of his committing an offence while on bail), where the three conditions below exist:
- (i) there is drug test evidence that the person has a specified Class A drug in his body (by way of a lawful test obtained under section 63B of the Police and Criminal Evidence Act 1984 or Section 161 of this Act);
 - (ii) either the offence is a drugs offence associated with a specified Class A drug or the court is satisfied that there are substantial grounds for believing that the misuse of a specified Class A drug caused or contributed to that offence or provided its motivation; and
 - (iii) the person does not agree to undergo an assessment as to his dependency upon or propensity to misuse specified Class A drugs or, has undergone such an assessment but does not agree to participate in any relevant follow-up offered.
157. The assessment will be carried out by a suitably qualified person, who will have received training in the assessment of drug problems. If an assessment or follow-up is proposed and agreed to, it will be a condition of bail that they be undertaken. The provision can only apply in areas where appropriate assessment and treatment facilities are in place.

Section 20: Supplementary amendments to the Bail Act 1976

158. *Section 20* makes supplementary amendments to the Bail Act 1976.

*These notes refer to the Criminal Justice Act 2003 (c.44)
which received Royal Assent on 20th November 2003*

Section 21: Interpretation of Part 2

159. *Section 21* defines various terms used in this Part of the Act.