



# Criminal Justice Act 2003

## 2003 CHAPTER 44

### PART 10

#### RETRIAL FOR SERIOUS OFFENCES

##### *Arrest, custody and bail*

#### **87 Arrest and charge**

- (1) Where section 85 applies to the investigation of the commission of an offence by any person and no certification has been given under subsection (2) of that section—
  - (a) a justice of the peace may issue a warrant to arrest that person for that offence only if satisfied by written information that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the commission by that person of that offence, and
  - (b) that person may not be arrested for that offence except under a warrant so issued.
- (2) Subsection (1) does not affect section 89(3)(b) or 91(3), or any other power to arrest a person, or to issue a warrant for the arrest of a person, otherwise than for an offence.
- (3) Part 4 of the 1984 Act (detention) applies as follows where a person—
  - (a) is arrested for an offence under a warrant issued in accordance with subsection (1)(a), or
  - (b) having been so arrested, is subsequently treated under section 34(7) of that Act as arrested for that offence.
- (4) For the purposes of that Part there is sufficient evidence to charge the person with the offence for which he has been arrested if, and only if, an officer of the rank of superintendent or above (who has not been directly involved in the investigation) is of the opinion that the evidence available or known to him is sufficient for the case to be referred to a prosecutor to consider whether consent should be sought for an application in respect of that person under section 76.

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- (5) For the purposes of that Part it is the duty of the custody officer at each police station where the person is detained to make available or known to an officer at that police station of the rank of superintendent or above any evidence which it appears to him may be relevant to an application under section 76(1) or (2) in respect of the offence for which the person has been arrested, and to do so as soon as practicable—
- (a) after the evidence becomes available or known to him, or
  - (b) if later, after he forms that view.
- (6) Section 37 of that Act (including any provision of that section as applied by section 40(8) of that Act) has effect subject to the following modifications—
- (a) in subsection (1)—
    - (i) for “determine whether he has before him” there is substituted “ request an officer of the rank of superintendent or above (who has not been directly involved in the investigation) to determine, in accordance with section 87(4) of the Criminal Justice Act 2003, whether there is ”;
    - (ii) for “him to do so” there is substituted “ that determination to be made ”;
  - (b) in subsection (2)—
    - (i) for the words from “custody officer determines” to “before him” there is substituted “ officer determines that there is not such sufficient evidence ”;
    - (ii) the word “custody” is omitted from the second place where it occurs;
  - (c) in subsection (3)—
    - (i) the word “custody” is omitted;
    - (ii) after “may” there is inserted “ direct the custody officer to ”;
  - (d) in subsection (7) for the words from “the custody officer” to the end of that subsection there is substituted “ an officer of the rank of superintendent or above (who has not been directly involved in the investigation) determines, in accordance with section 87(4) of the Criminal Justice Act 2003, that there is sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested shall be charged. ”;
  - (e) subsections (7A), (7B) and (8) do not apply;
  - (f) after subsection (10) there is inserted—
 

“(10A) The officer who is requested by the custody officer to make a determination under subsection (1) above shall make that determination as soon as practicable after the request is made.”.
- (7) Section 40 of that Act has effect as if in subsections (8) and (9) of that section after “(6)” there were inserted “ and (10A) ”.
- (8) Section 42 of that Act has effect as if in subsection (1) of that section for the words from “who” to “detained” there were substituted “ (who has not been directly involved in the investigation) ”.

#### **Commencement Information**

- II** S. 87 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\)](#), [Sch. 1 para. 5](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

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## 88 Bail and custody before application

- (1) In relation to a person charged in accordance with section 87(4)—
- (a) section 38 of the 1984 Act (including any provision of that section as applied by section 40(10) of that Act) has effect as if, in subsection (1), for “either on bail or without bail” there were substituted “on bail”,
  - (b) section 47(3) of that Act does not apply and references in section 38 of that Act to bail are references to bail subject to a duty to appear before the Crown Court at such place as the custody officer may appoint and at such time, not later than 24 hours after the person is released, as that officer may appoint, and
  - (c) section 43B of the Magistrates' Courts Act 1980 (c. 43) does not apply.
- (2) Where such a person is, after being charged—
- (a) kept in police detention, or
  - (b) detained by a local authority in pursuance of arrangements made under section 38(6) of the 1984 Act,
- he must be brought before the Crown Court as soon as practicable and, in any event, not more than 24 hours after he is charged, and section 46 of the 1984 Act does not apply.
- (3) For the purpose of calculating the period referred to in subsection (1) or (2), the following are to be disregarded—
- [<sup>F1</sup>(za) Saturday,]
- (a) Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, and
  - (d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is to appear before the Crown Court as mentioned in subsection (1) or, where subsection (2) applies, is for the time being detained.
- (4) Where a person appears or is brought before the Crown Court in accordance with subsection (1) or (2), the Crown Court may either—
- (a) grant bail for the person to appear, if notice of an application is served on him under section 80(2), before the Court of Appeal at the hearing of that application, or
  - (b) remand the person in custody to be brought before the Crown Court under section 89(2).
- (5) If the Crown Court grants bail under subsection (4), it may revoke bail and remand the person in custody as referred to in subsection (4)(b).
- (6) In subsection (7) the “relevant period”, in relation to a person granted bail or remanded in custody under subsection (4), means—
- (a) the period of 42 days beginning with the day on which he is granted bail or remanded in custody under that subsection, or
  - (b) that period as extended or further extended under subsection (8).
- (7) If at the end of the relevant period no notice of an application under section 76(1) or (2) in relation to the person has been given under section 80(1), the person—
- (a) if on bail subject to a duty to appear as mentioned in subsection (4)(a), ceases to be subject to that duty and to any conditions of that bail, and

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- (b) if in custody on remand under subsection (4)(b) or (5), must be released immediately without bail.
- (8) The Crown Court may, on the application of a prosecutor, extend or further extend the period mentioned in subsection (6)(a) until a specified date, but only if satisfied that—
- (a) the need for the extension is due to some good and sufficient cause, and
  - (b) the prosecutor has acted with all due diligence and expedition.

#### **Textual Amendments**

- F1** S. 88(3)(za) inserted (15.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 148, 153(7), [Sch. 26 para. 63](#); [S.I. 2008/1586](#), [art. 2\(2\)](#)

#### **Commencement Information**

- I2** S. 88 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 5](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

## **89 Bail and custody before hearing**

- (1) This section applies where notice of an application is given under section 80(1).
- (2) If the person to whom the application relates is in custody under section 88(4)(b) or (5), he must be brought before the Crown Court as soon as practicable and, in any event, within 48 hours after the notice is given.
- (3) If that person is not in custody under section 88(4)(b) or (5), the Crown Court may, on application by the prosecutor—
  - (a) issue a summons requiring the person to appear before the Court of Appeal at the hearing of the application, or
  - (b) issue a warrant for the person’s arrest,
 and a warrant under paragraph (b) may be issued at any time even though a summons has previously been issued.
- (4) Where a summons is issued under subsection (3)(a), the time and place at which the person must appear may be specified either—
  - (a) in the summons, or
  - (b) in a subsequent direction of the Crown Court.
- (5) The time or place specified may be varied from time to time by a direction of the Crown Court.
- (6) A person arrested under a warrant under subsection (3)(b) must be brought before the Crown Court as soon as practicable and in any event within 48 hours after his arrest, and section 81(5) of the Supreme Court Act 1981 (c. 54) does not apply.
- (7) If a person is brought before the Crown Court under subsection (2) or (6) the court must either—
  - (a) remand him in custody to be brought before the Court of Appeal at the hearing of the application, or
  - (b) grant bail for him to appear before the Court of Appeal at the hearing.
- (8) If bail is granted under subsection (7)(b), the Crown Court may revoke the bail and remand the person in custody as referred to in subsection (7)(a).

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(9) For the purpose of calculating the period referred to in subsection (2) or (6), the following are to be disregarded—

- [<sup>F2</sup>(za) Saturday,]
- (a) Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, and
  - (d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is for the time being detained.

#### Textual Amendments

**F2** S. 89(9)(za) inserted (15.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 148, 153\(7\), Sch. 26 para. 63; S.I. 2008/1586, art. 2\(2\)](#)

#### Commencement Information

**I3** S. 89 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 5](#) (subject to [art. 2\(2\), Sch. 2](#))

## 90 Bail and custody during and after hearing

(1) The Court of Appeal may, at any adjournment of the hearing of an application under section 76(1) or (2)—

- (a) remand the person to whom the application relates on bail, or
- (b) remand him in custody.

(2) At a hearing at which the Court of Appeal—

- (a) makes an order under section 77,
- (b) makes a declaration under subsection (4) of that section, or
- (c) dismisses the application or makes a declaration under subsection (3) of that section, if it also gives the prosecutor leave to appeal against its decision or the prosecutor gives notice that he intends to apply for such leave,

the court may make such order as it sees fit for the custody or bail of the acquitted person pending trial pursuant to the order or declaration, or pending determination of the appeal.

(3) For the purpose of subsection (2), the determination of an appeal is pending—

- (a) until any application for leave to appeal is disposed of, or the time within which it must be made expires;
- (b) if leave to appeal is granted, until the appeal is disposed of.

(4) Section 4 of the Bail Act 1976 (c. 63) applies in relation to the grant of bail under this section as if in subsection (2) the reference to the Crown Court included a reference to the Court of Appeal.

(5) The court may at any time, as it sees fit—

- (a) revoke bail granted under this section and remand the person in custody, or
- (b) vary an order under subsection (2).

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### Commencement Information

- I4** S. 90 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 5](#) (subject to [art. 2\(2\), Sch. 2](#))

## 91 Revocation of bail

- (1) Where—
- (a) a court revokes a person’s bail under this Part, and
  - (b) that person is not before the court when his bail is revoked,
- the court must order him to surrender himself forthwith to the custody of the court.
- (2) Where a person surrenders himself into the custody of the court in compliance with an order under subsection (1), the court must remand him in custody.
- (3) A person who has been ordered to surrender to custody under subsection (1) may be arrested without a warrant by an officer if he fails without reasonable cause to surrender to custody in accordance with the order.
- (4) A person arrested under subsection (3) must be brought as soon as practicable, and, in any event, not more than 24 hours after he is arrested, before the court and the court must remand him in custody.
- (5) For the purpose of calculating the period referred to in subsection (4), the following are to be disregarded—
- [<sup>F3</sup>(za) Saturday,]
- (a) Sunday,
  - (b) Christmas Day,
  - (c) Good Friday,
  - (d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is for the time being detained.

### Textual Amendments

- F3** S. 91(5)(za) inserted (15.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 148, 153\(7\), Sch. 26 para. 63; S.I. 2008/1586, art. 2\(2\)](#)

### Commencement Information

- I5** S. 91 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 5](#) (subject to [art. 2\(2\), Sch. 2](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/2574, Sch. by [S.I. 2012/2761 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 150(aa) inserted by [2012 c. 10 Sch. 26 para. 19\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
- s. 150(ba) inserted by [2012 c. 10 Sch. 26 para. 19\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
- s. 151(A1) inserted by [2008 c. 4 s. 11\(3\)](#)
- s. 151(1A) inserted by [2008 c. 4 s. 11\(5\)](#)
- s. 151(1A)(b) word substituted by [2008 c. 4 Sch. 4 para. 76\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
- s. 151(1A)(c) substituted by [2009 c. 25 Sch. 17 para. 8\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
- s. 151(2A)(b) substituted by [2009 c. 25 Sch. 17 para. 8\(4\)](#)
- s. 151(4A) inserted by [2009 c. 25 Sch. 17 para. 8\(5\)](#)
- s. 151(8)(a) words substituted by [2009 c. 25 Sch. 17 para. 8\(6\)\(a\)](#)
- s. 151(8)(b) words inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(b\)\(i\)](#)
- s. 151(8)(b) words substituted by [2009 c. 25 Sch. 17 para. 8\(6\)\(b\)\(ii\)](#)
- s. 151(8)(c)-(f) inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(c\)](#)
- s. 165(5) inserted by [2014 c. 12 s. 179\(3\)](#)
- s. 237(1A) inserted by [2006 c. 48 s. 34\(3\)](#)
- s. 237(1B)(f)(g) inserted by [2021 c. 11 Sch. 13 para. 40\(b\)](#)
- s. 239A inserted by [2015 c. 2 s. 8\(1\)](#)
- s. 239A cross-heading inserted by [2015 c. 2 Sch. 3 para. 5](#)
- s. 250(5C) inserted by [2015 c. 2 Sch. 3 para. 7\(4\)](#)
- s. 255A(4A) inserted by [2015 c. 2 s. 9\(2\)](#)
- s. 255B(3A) inserted by [2015 c. 2 s. 9\(3\)\(b\)](#)
- s. 255B(4A)-(4C) inserted by [2015 c. 2 s. 9\(3\)\(d\)](#)
- s. 255C(3A) inserted by [2015 c. 2 s. 9\(4\)\(b\)](#)
- s. 255C(4A)-(4C) inserted by [2015 c. 2 s. 9\(4\)\(d\)](#)
- s. 256A(1)-(1B) substituted for s. 256A(1) by [2015 c. 2 s. 9\(6\)\(a\)](#)
- s. 256A(4A)(4B) inserted by [2015 c. 2 s. 9\(6\)\(f\)](#)
- s. 256A(5)(6) substituted for s. 256A(5) by [2015 c. 2 s. 9\(6\)\(g\)](#)
- s. 256AZA inserted by [2015 c. 2 s. 10\(1\)](#)
- s. 257(3) inserted by [2006 c. 48 s. 34\(4\)](#)
- s. 258(1A) inserted by [2006 c. 48 s. 34\(5\)](#)
- s. 260(4)(aa) substituted for word by [2008 c. 4 s. 34\(7\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 34(2)(4)(b)(7)(10) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(b); S.I. 2012/2906, art. 2(d))

- Sch. 15B para. 49A omitted by [S.I. 2019/780 reg. 26\(4\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 15B para. 49B omitted by [S.I. 2019/780 reg. 26\(4\)\(d\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 20B para. 34(6)(7) substituted for Sch. 20B para. 34(6) by [2015 c. 2 Sch. 3 para. 10](#)