

BAIL

THE GENERAL RIGHT TO BAIL

Section 4 of the Bail Act 1976 provides that bail *shall* be granted to:

- (a) A person accused of an offence who appears before a magistrates' court or the Crown Court in connection with proceedings for the offence.
- (b) A person accused of an offence who applies to a court for bail in connection with the proceedings.
- (c) A person who, having been convicted of an offence, appears before a magistrates' court to be dealt with for breach of a probation or community service order.
- (d) A person who has been convicted of an offence and whose case has been adjourned for reports to be obtained before sentence.

Section 4 applies when a person appears before a magistrates' court or the Crown Court.

EXCEPTIONS

1. Schedule 1 to the Bail Act 1976 provides that, where the accused is charged with an offence punishable with imprisonment, he need not be granted bail in the following circumstances:

- (a) If the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail, would:
 - (i) fail to surrender to custody, or
 - (ii) commit an offence while on bail, or
 - (iii) interfere with witnesses or otherwise obstruct the course of justice.
- (b) If the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or a young person, for his own welfare.
- (c) If the defendant is already in custody in pursuance of a court sentence.
- (d) If it has not been practicable for want of time to obtain sufficient information to enable the court to make its decision on bail.
- (e) If the defendant, having been released on bail, has been arrested for absconding or breaking the conditions of his bail.
- (f) If the offence is one triable on indictment or either way and the defendant was on bail in criminal proceedings on the date of the offence (as inserted by the CJPOA 1994).

Relevant considerations

In making its decision under (a) above, the court must have regard to such of the following considerations as appear to it to be relevant:

- the nature and seriousness of the offence;
- the character, antecedents, associations and community ties of the defendant;
- the defendant's record as respects the fulfilment of his obligations under previous grants of bail; and,
- except in a case which is adjourned for inquiries or a report, the strength of the evidence of the defendant having committed the offence.

The court must also take into account any other considerations which appear to be relevant.

2. Where the accused is charged with an offence which is not punishable with imprisonment, Schedule 1 provides that bail may be withheld only in circumstances mentioned in (b), (c) and (e) above, or where the court believes, in view of a previous failure to surrender to custody, that the defendant would abscond if released on bail (Schedule 1, Part II).

3. If the defendant is charged with murder, manslaughter, rape, attempted murder or attempted rape, and is granted bail after representations have been made by the prosecution about any of the grounds specified in (a) above, the court must give reasons for its decision to grant bail (Schedule 1, Part I, para 9A, Bail Act 1976, as inserted by s153 Criminal Justice Act 1988)

4. A defendant charged with or convicted of murder, manslaughter, rape, attempted murder or attempted rape after previous conviction of such offences shall be granted bail only if the court or, as the case may be, the constable considering the grant of bail is satisfied that there are exceptional circumstances which justify it (s25, Criminal Justice and Public Order Act 1994, as amended by s56 Crime and Disorder Act 1998).

CONDITIONS

Section 3 of the Bail Act 1976 provides that bail may be granted on conditions. The possible conditions under s3 are provision of sureties; reporting; residence and restrictions. Breach of a bail condition renders the defendant liable to arrest without a warrant by a constable (s7(3) Bail Act 1976).

POLICE BAIL

There is no right to bail at the police station.

When a magistrate issues a warrant for arrest he may endorse it for bail, ie, give a written direction that the person to be arrested is to be released on bail subject to a duty to appear before a magistrates' court on the date specified and with the amount in which any surety is to be bound (s117 Magistrates' Courts Act 1980).

The police also have powers, under ss37 and 38 of the Police and Criminal Evidence Act 1984, to grant bail to persons arrested either

without a warrant or under a warrant not endorsed for bail. These powers are subject to the exceptions in s25 CJPOA 1994 above.

The police can attach conditions if this appears to be necessary for ensuring that the defendant surrenders to custody, does not commit an offence while on bail, or does not interfere with witnesses or otherwise obstruct the course of justice (s3 Bail Act 1976, as amended by s27 CJPOA 1994).

BAIL IN THE MAGISTRATES' COURT

Under the Magistrates' Courts Act 1980, a defendant may apply for bail at the magistrates' court when:

- (a) he is brought before a magistrates' court and the hearing is adjourned (s128);
- (b) he is committed for trial to the Crown Court (s6(3);
- (c) he is committed to the Crown Court for sentence (s38);
- (d) he has been convicted summarily and the magistrates adjourn the proceedings in order to consider sentence (s128).

The magistrates may impose conditions when granting bail if this appears necessary to ensure that the defendant:

- surrenders to custody;
- does not commit an offence while on bail;
- does not interfere with witnesses or otherwise obstruct the course of justice; or
- makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged (s3(6) Bail Act 1976).

The defendant is permitted to make two fully argued applications for bail before the magistrates. After those the magistrates need not hear a further application unless the defendant has a new argument to advance (Schedule I, PartIIA Bail Act 1976).

APPEALS

Defence appeal to the Crown Court

There is a limited right to make an application to the Crown Court against a magistrates' court's refusal of bail. A person remanded in custody by magistrates prior to summary trial or committal proceedings, or after summary conviction and before sentence, can apply to the Crown Court for bail. However, the Crown Court can only grant bail on such an application if the magistrates' court has certified that it heard full argument on the defendant's bail application before rejecting it (s81(1) Supreme Court Act 1981, as inserted by the Criminal Justice Act 1982).

Defence appeal to the High Court

Where a magistrates' court refuses bail or grants it subject to conditions, the defendant may apply to the Queen's Bench Division of the High Court and a judge in chambers may grant bail or vary the conditions (s22(1) Criminal Justice Act 1967, as amended by the Bail Act 1976, sch. 2, para 37).

Prosecution appeal to the Crown Court

Where a magistrates' court grants bail to a person who is charged with or convicted of (a) an offence punishable by a prison sentence of five years or more, or (b) an offence of taking a conveyance without authority or aggravated vehicle taking, the prosecution may appeal to a judge of the Crown Court against the granting of bail. The right of appeal applies only where the prosecution is conducted by or on behalf of the DPP, and the prosecution made representations that bail should not be granted. The right of appeal can only be exercised if the prosecution gives both oral and written notice of appeal.

Prosecution application for reconsideration

The prosecution can apply to a magistrates' court for reconsideration of a decision to grant bail made by the court or by the police, where:

- (a) the defendant is charged with an indictable offence or an either-way offence and not with a summary offence only; and
- (b) the application is based on new information which was not available to the court or the police at the time when the original decision to grant bail was made.

On an application for reconsideration of a bail decision, the court may impose or vary bail conditions or withhold bail altogether (s5B Bail Act 1976, as inserted by the CJPOA 1994).

FAILURE TO SURRENDER

If a person who has been released on bail fails without reasonable cause to surrender to custody he is guilty of an offence (s6(1) Bail Act 1976).