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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION

_____

IN THE MATTER OF JAMES MAUGHAN
(APPLICANT FOR BAIL)

_____

McCLOSKEY J

I INTRODUCTION

[1] This judgment considers certain issues of practice which arose in the course of this application to estreat the recognizances of two bail sureties. At the outset, I must acknowledge my appreciation of the efforts made by Mr. McLean (of counsel) and Mr. Rea of the Public Prosecution Service ("*the PPS*") to assemble and furnish certain information, in response to requests made by the court.

II FACTUAL MATRIX

[2] The factual matrix can be outlined in relatively short compass. On 23rd December 2009, the High Court granted compassionate bail to the Applicant, James Maughan. The order recites:

> "***It is ordered*** *that the Applicant be admitted to bail himself in the sum of £200, with two sufficient sureties both in the sum of £500 for the personal appearance of the said Applicant before prison at Maghaberry in accordance with the conditions on which bail is granted.* ***And it is ordered*** *that bail be granted to the Applicant subject to the following conditions …*".

In essence, the Applicant was granted compassionate bail of twenty-four hours duration, subject to certain stringent conditions. The sureties required by the order of the court were Brian Maughan, the Applicant's brother and

Rose Maughan, the Applicant's spouse. Each of the sureties duly executed a recognizance in writing, whereby they acknowledged themselves "*… bound to forfeit to the Crown the* [sum of £500 each] *… in case the said principal party fails to perform the above obligation, payment thereof to be enforced against them by due process of law if the said principal party fails to comply with the said conditions herein*".

[3] It is common case that the Applicant failed to return to prison, in breach of the order of the court. This was the impetus for an application to estreat the aforementioned recognizances. When the estreatment application was first listed, the court enquired about the procedure, with specific reference to whether there was any formal Notice or other initiating process grounding the application. At this stage, there was a shared assumption that the PPS was the moving party. This elicited the response from counsel that no formal initiating process existed and that the application was proceeding on the basis of two letters, couched in identical terms, from the Central Office of the Royal Courts of Justice to each of the sureties, as follows:

> "*The court has been informed by the prison authorities that James Maughan … failed to return to HM Prison, Maghaberry. The judge is considering estreating the recognizance for £500 which you entered into on behalf of James Maughan i.e. ordering that you forfeit the sum of £500 because of James Maughan's failure to honour his bail. You should attend at the Royal Courts of Justice, Chichester Street, Belfast at 10.00am on Monday 11th January 2010 either personally or through a solicitor.*"

The letters were signed by the "Listing Officer". Following an adjournment, further enquiries established that the application had been brought at the instigation of the Court Office and not the PPS. As appears from Order 79, Rule 8(2) – paragraph [5] *infra* - this is permitted by the relevant rules of court.

III RULES OF THE COURT OF JUDICATURE

[4] It is recalled that in matters of bail the jurisdiction of the High Court is inherent, not statutory. The function of the relevant rules of court is simply to regulate various aspects of the procedure relating to the exercise of this jurisdiction. They do not constitute substantive law . The procedural regime governing bail matters in the High Court is contained in Order 79 of the Rules of the Court of Judicature. This contains the following material provisions. Firstly, Rule 1 provides:

"1. In this Order, save where the context otherwise requires –

'application' means an application to the High Court or the Court of Appeal in relation to bail;

'surrender to custody' means, in relation to a person released on bail, surrendering himself into the custody of the Court or other proper authority (according to the requirements of the order admitting him to bail) at the time and place appointed for him to do so."

This is followed by Rule 2:

"2. - (1) Every application to the High Court, other than an application made during the hearing of any proceedings, must be made by delivering to the Central Office a, notice setting out she grounds of the application and referring to any earlier application to the Court or a magistrate's court in the same proceedings.

(2) An application by a defendant must be in Form No.38 in Appendix A and an application by any other person must be in Form No.39.

(3) The proper officer in the Central Office on receiving the notice shall-

(a) furnish a copy thereof to the prosecutor, unless he is the applicant, and at the same time inform him by telephone of the terms of the notice;

(b) ask the appropriate chief clerk or clerk of petty sessions, as the case may be, to send him forthwith all documents in his possession which are relevant to the application;

(c) where the application has been made by the prosecutor of a surety in respect of a defendant who is on bail, give a copy of the notice to that defendant; and

(d) subject to any direction of the Court, list the application for hearing for a time not later than 7 days from the date on which he received the notice and inform the defendant, the prosecutor, the governor or keeper of the prison or other place in which the defendant is detained and, where he is the

applicant, the surety of the time and place of hearing."

Per Rule 3:

"3. - (1) Where a defendant is admitted to bail under rule 2, the proper officer must forthwith file the order admitting the defendant to bail.

(2) The proper officer must give a copy of the order to the defendant by handing it to the person having custody of him."

Rules 6 and 7 regulate the topic of recognizances, providing:

"Persons to take recognizances

6. - (1) Where bail is granted by the High Court, it may direct that a recognizance shall be entered into or other security given before-

(a) a clerk of petty sessions;

(b) an officer serving in the Court of `Judicature; or

(c) the governor or keeper of any prison or other place of detention where the person granted bail is confined.

(2) Where bail is granted by the Court of Appeal, it may direct that a recognizance shall be entered into or other security given before-

(a) an officer serving in the Court of `Judicature; or
(b) the governor or keeper of any prison or other place of detention where the person granted bail is confined.

Manner in which recognizances to be entered into

7. Recognizances may be entered into or security given before a person specified in rule 6 on the production to him of a copy of the order admitting the defendant, appellant, or applicant, as the case may be, to bail with or without sureties of such number and amount as the Court may direct."

At this juncture, it should be noted that there is a practice direction governing the lodgement of funds in court by a surety: see Practice Direction No. 1 of 1997, dated 13th March 1997 (appended hereto).

[5] The subject of estreatment of recognizances is governed by Order 79, Rule 8, which provides:

> *"8. - (1) Where a recognizance has been duly entered into for the appearance of a defendant at a Crown Court or a magistrates' court, the recognizance may be estreated by the court at which he is to appear.*
>
> *(2) Where a recognizance has been duly entered into following a direction by the High Court or the Court of Appeal and it appears to that Court that default has been made in performing any condition of the recognizance, the Court may either of its own motion or on the application of the prosecutor order the recognizance to be estreated in any such sum not exceeding the amount of the recognizance as it thinks fit to order.*
>
> *(3) Upon ordering the estreat of a recognizance under paragraph (2) the Court may issue a warrant to levy the amount forfeited by distress and sale of the property of any person bound by the recognizance and in default of distress to commit such person to prison as if for default in the payment of a sum adjudged to be paid by a conviction, and accordingly the period for which such person may be committed shall not exceed that specified in Schedule 3 to the Magistrates Courts (Northern Ireland) Order 1981."*

The provisions relating to the forfeiture of security are contained in Rule 9, which provides:

> *"9. - (1) Where security has been duly given by or on behalf of a defendant for his surrender to custody to a Crown Court or a magistrates' court, as the case may be, such security may be forfeited by the court to which he is to surrender.*
>
> *(2) Where security has been duly given by or on behalf of a defendant to the High Court or the Court of Appeal for his surrender to custody and that 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 either of its own motion or on the application of the prosecutor order the forfeiture of the security in any such*

sum not exceeding the value thereof, as it thinks fit to order.

(3) A security which has been ordered to be forfeited under paragraphs (1) or (2) shall to the extent of the forfeiture:-

(a) if it consists of money, be accounted for and paid in the same manner as a fine imposed by the court; and

(b) if it does not consist of money be enforced by such magistrates' court as may be specified in the order."

For the purposes of this ruling, Rule 10 is the most important provision. This provides:

"10. Where the High Court or the Court of Appeal is to consider making an order under rule 8 or 9, the proper officer shall give notice to that effect to the person by whom the recognizance was entered into or security given indicating the time and place at which the matter will be considered, and no such order shall be made before the expiration of 7 days after the notice required by this rule has been given."

Court Forms

[6] As appears from the above, Order 79, Rule 2(2) envisages the possibility of two differing applications in bail matters:

(a) An application by a Defendant – this must be lodged in Form No. 38 of Appendix A to the Rules.

(b) An application by "*any other person*" – which must be lodged in Form No. 39.

There are fundamental differences between these two Forms. Stated succinctly, the detailed information which a properly completed Form 38 is designed to incorporate is not replicated in Form 39.

Form 38

[7] Form 38 is entitled "Notice of Application to the High Court for Bail". Its current format is attributable to SR 2005/163 (effective from 18th April 2005). Based on the collective experiences of the High Court judiciary, one might question whether due completion of this form by the Applicant's

solicitors is honoured more in the breach than the observance. There are two particular requirements which may be highlighted in this respect. The first is the requirement to set out the grounds of the application: regrettably, experience shows that the quality of the completed Forms is variable and, frequently, there is little or no attempt to tailor standardized linguistic formulae to the individual case. The second is the requirement to insert names and addresses under the following rubric:

> "***Sureties***
>
> *In the event of the Applicant being admitted to bail the following persons would be willing to stand as sureties for due surrender of the Applicant to his bail …*".

Interestingly, this is linked to Note (11), which states:

> "*The name(s) of a surety or sureties may be inserted here although it is not necessary to give these details at this point*".

The origins and rationale of this note are unclear. As a minimum, one would expect that every applicant for bail, absent convincing reason, should state specifically in the Notice whether sureties are available at the time of submitting the application and, if so, to include appropriate particulars – names, addresses, a brief indication of financial means/resources and so forth. In the absence of this information, the police are unable to make the appropriate enquiries, resulting in unnecessary adjournments and wasted costs. It is in the interests of all concerned, including the Applicant, that Form 38 be completed as meticulously and comprehensively as possible.

Form 39

[8] Form No. 39, which contrasts fundamentally with Form 38, is in the following terms:

> "***Notice of Application to High Court for Bail (other than by Defendant)***
>
> ***IN THE MATTER OF****…*
>
> *TAKE NOTICE THAT* ***[prosecutor or surety]*** *of …hereby applies to the High Court for an order* ***[state order applied for]*** *…*
>
> *The ground on which this application is made …* ***[Note 5: Set out the grounds on which the application is made.***

Note 6: No affidavit is required in support of this application*].*

DATED this day of …

Signed…

To: The Central Office
Royal Courts of Justice".

Thus, Form 39 simply requires particulars of:

(a) The title

(b) The moving party.

(c) The order sought.

(d) The grounds of the application.

Significantly, Note (3) envisages that the moving party will be either the prosecutor or a surety.

The Over-riding Objective

[9] Any question relating to the proper construction of Order 79 engages the over-riding objective enshrined in Order 1, Rule 1A, which provides:

> *"1A. - (1) The overriding objective of these Rules is to enable the Court to deal with cases justly.*
>
> *(2) Dealing with a case justly includes, so far as is practicable –*
>
> *(a) ensuring that the parties are on an equal footing;*
>
> *(b) saving expense;*
>
> *(c) dealing with the case in ways which are proportionate to -*
>
> *(i) the amount of money involved;*
> *(ii) the importance of the case;*
> *(iii) the complexity of the issues; and*
> *(iv) the financial position of each party;*

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.

(3) The Court must seek to give effect to the overriding objective when it -

(a) exercises any power given to it by the Rules; or

(b) interprets any rule.

(4) Paragraph (3) above shall apply subject to the provisions in Order 116A, rule 2(1) and Order 116B, rule 2(1)."

This is the over-riding objective of the Rules of the Court of Judicature. It is of some longevity, having been introduced almost nine years ago [see SR 2001 No. 254, effective from 5th September 2001]. Its terms must by now be more than familiar to all who practice in the various Divisions of the High Court.

IV CONSIDERATION

Bail

[10] At the outset, it is instructive to reflect on the concept of bail. This has evolved during the course of several centuries. In the 37th Edition of Archbold (published in 1973 and, thus, prior to the inception of the Bail Act 1976), it is stated:

> "*Bail are sureties taken by a person duly authorised, for the appearance of an accused person at certain day and place, to answer and be justified by law… The condition of the recognizance, as respects the sureties, is performed by the appearance of the accused person, though he stands mute… The defendant is placed in the custody of his bail; who may re-seize him if they have reason to suppose that he is about to fly, and may bring him before a justice, who will commit him in discharge of the bail".*

It is noteworthy that in ***G v Secretary of State for the Home Department*** [2004] EWCA Civ 265, Pill LJ stated, *obiter* (at p. 24):

> *"The usual meaning of bail, whether in ordinary language or in statute (for example, Bail Act 1976 and Magistrates Court Act 1980, section 128) is the temporary release of a person pending a further decision of a court (or administrative body)."*

What emerges from these two differing formulations is that in every bail context, the released detainee features as a protagonist, while in many (but not all) bail contexts, there is a further member of the cast, who performs the role of guarantor (or surety).

The Recognizance

[11] Where there is a surety, the guarantee (or assurance) provided conventionally (but not always) takes the form of a recognizance. Stroud's Judicial Dictionary of Words and Phrases (7th Ed) defines "*recognizance*" in the following terms:

> *"The acknowledgment of a debt due to the King, defeasible upon the happening of a certain event, namely the appearance of a party in court pursuant to the terms of the condition. In this respect, a recognisance resembles a bond in its nature".*

Thus, a recognizance could be viewed, in its most simplistic form, as an undertaking by a person [the beneficiary] to forfeit a sum of money should he fail to abide by the conditions of an agreement. Where the beneficiary breaches the condition of the recognizance, for example by failing to appear before the court, the penalty is estreatment and he will be liable to pay the debt. In the case of a surety, where the bailed person fails to surrender to custody, then it is the surety's debt which becomes liable. Thus where a person is released on recognizance and fails to honour a court appearance subsequently, estreatment is an available penalty. However, in principle, bail can be granted without a recognizance (as confirmed by the wording of Order 79, Rule 6 RCC). Accordingly,, if bail is granted without a recognizance, there is nothing to estreat.

The Criminal Justice (Northern Ireland) Order 2003

[12] At this juncture, it is appropriate to consider Part II of the Criminal Justice (Northern Ireland) Order 2003 ("*the 2003 Order*"), wherein Articles 3-10 are arranged under the banner "Bail in Criminal Proceedings". Article 3 provides:

"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".

Article 4 establishes the concept of a duty to surrender to custody. It provides:

"***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
(b) at the police station and at the time appointed for him to do so."

By virtue of Article 5, an offence is committed where a released person fails without reasonable cause to surrender to custody. Article 5 states:

"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.

(3) A person guilty of an offence under paragraph (1) or (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both."

By Article 6, the court is empowered to issue a warrant for the arrest of the released person. Interestingly, Article 6(3) permits an *anticipatory* arrest by the police of a released person, in specified circumstances. Where this occurs, Article 6(6)(a) gives statutory effect to two of the well established grounds for either refusing or revoking bail viz:

"*(i) is not likely to surrender to custody, or*

(ii) has broken or is likely to break any condition of his bail …".

[13] The provisions of Part II of the 2003 Order place in sharp focus the distinction between the concepts of bail and recognizance. Whereas a person released on bail is under a personal statutory obligation to surrender to custody, on pain of prosecution and punishment for commission of a criminal offence, the obligations undertaken by a surety in the execution of a recognizance are more properly viewed as an undertaking, or guarantee, belonging to the realm of civil law. Where a breach occurs, the sanction is the forfeiture of a monetary bond, in whole or in part. This may be contrasted with the commission of a criminal offence.

[14] In this respect, the amendment of the Magistrates Courts (Northern Ireland) Order 1981 is noteworthy. The newly inserted Article 138(2A) provides:

> *"If, in the case of a recognizance a condition of which is that an accused appears before a magistrates' court, the accused fails to appear in accordance with the condition, the court shall-*
>
> *(a) order the estreat of the recognizance; and*
> *(b) direct the issue of a summons to any surety for that person requiring the surety to appear before a court of summary jurisdiction on a date specified in the summons to show cause why he should not pay the sum in which he is bound;*
>
> *and on that date the court may proceed in the absence of any surety if it is satisfied that he has been served with the summons."*

It is also relevant to consider the related reforms effected by the Magistrates' Courts (Amendment No. 2) Rules (NI) 2009, which inserted, by substitution, into the Magistrates Courts (Northern Ireland) Rules 1984 new provisions relating to the service of summonses. Rule 11 now provides that the summons for an offence being prosecuted by the PPS is to be served by the PSNI, whereas, in the case of Article 138(2A), it is *the court* which issues the summons and this may be served by way of post by a member of the NI Court Service. Thus the process for estreating a recognizance is essentially of a civil character .

THE MOVING PARTY

[15] The court was informed that a practice has developed in estreatment of recognizance applications, giving rise to the following dichotomy:

(a) In compassionate bail cases, estreatment applications are initiated by the Court Office.

(b) In all other cases, the moving party is the PPS.

The reasons for the evolution of this practice are unclear. In the former category of case, the PPS is notified by the Court Office and is duly represented, not *qua* moving party but as a potential supplier of relevant information to the court. I was informed that the standard practice is that in *all* bail applications, the PPS receives one working day's notice from the Court Office. This would appear to be a reflection of the consideration that in routine applications for bail, the liberty of the citizen is at stake. However, it seems to me that, in estreatment applications, different considerations arise, with the result that this kind of urgency should not normally feature, irrespective of who the moving party is. This is reflected in the rules: Order 79, Rule 10 stipulates that a minimum of seven days notice must be given before the court exercises the power contained in Rule 8(2) viz. to "*… order the recognizance to be estreated in any such sum not exceeding the amount of the recognizance as it thinks fit to order*".

[16] A consideration of the relevant statutory framework confirms that there is no inhibition on the PPS being the moving party in estreatment applications. Section 31 of the Justice (Northern Ireland) Act 2002 provides, insofar as material:

> ***"31 Conduct of prosecutions***
>
> *(1) The Director must take over the conduct of all criminal proceedings which are instituted in Northern Ireland on behalf of any police force (whether by a member of that force or any other person).*
>
> *(2) The Director may institute, and have the conduct of, criminal proceedings in any other case where it appears appropriate for him to do so…*
>
> *(4) The Director may at any stage take over the conduct of any criminal proceedings which are instituted in circumstances in which he is not under a duty to take over their conduct, other than any proceedings of which the Director of the Serious Fraud Office has conduct.*
>
> *(5) The Director must give to police forces such advice as appears to him appropriate on matters relating to the prosecution of offences.*"

Section 44(4) provides:

> "*(4) For the purposes of this Part references to the conduct of any proceedings include discontinuing the*

proceedings and the taking of any steps which may be taken in relation to the proceedings (including making representations on appeals or applications for judicial review or in bail applications)."

Thus the statutory powers conferred on the PPS in bail matters are clear.

[17] Where the PPS is the moving party in estreatment applications, I construe the rules to require service on the respondent surety of a properly completed Form No. 39. While this was a point of contention during the hearing, I note that it is now properly conceded (per the helpful letter of Mr. Rea of the PPS). To this I would add that, in my view, a properly completed Form 39 should specify, in brief and comprehensible terms:

(a) The conduct/failure or failures upon which the application is founded.

(b) The provisions of the court order which are alleged to have been breached.

(c) The extent to which any of the provisions of the court order were duly observed.

(d) Particulars of the default of the surety against whom the application is brought.

It seems to me that all of this is required by a combination of the existing rules, the Form, the over-riding objective and the elementary proposition that the surety is entitled to know in advance the particulars and grounds of the application. Further, from the perspective of good practice, it is highly desirable that *the court* receive a properly completed application. This will expedite the hearing, to the advantage of all concerned. As applications of this kind will rarely be urgent, there seems no good reason why the practice should not be as set out above.

[18] The power presently conferred on *the court* to initiate estreatment applications of its own motion might usefully be reconsidered by the relevant Rules Committees and other concerned agencies – in particular the PPS, the PSNI and the Prison Service. Consideration might be given to whether this power has any enduring value. At present, it would appear that the decision maker is the Central Office "*Listing Officer*". It is unclear whether any measure of discretion or governing criteria are applied to such decisions. One is instinctively wary of procedures in which the court assumes the twin roles of prosecutor and adjudicator, given the fundamental requirement, both at common law and under Article 6 ECHR, that the court must be impartial.

[19] This consideration has arisen in the admittedly different context of contempt proceedings: see ***The Queen –v- Schot and Barclay*** [1997] 2 Cr. App. R 383, ***Wilkinson –v- S*** [2003] 1 WLR 1254 and ***Mayer –v- HM Advocate*** [2004] SCCR 734. In ***Kypianou –v- Cyrpus*** [2007] 44 EHRR 27, a contempt case, the Grand Chamber was prompted to observe:

> "*[126] … the Court recalls that, both in relation to Article 6(1) of the Convention and in the context of Article 5(3), it has found doubts as to impartiality to be objectively justified where there is some confusion between the functions of prosecutor and judge*".

In the following paragraph, the Court referred to the "*time honoured principle*" that "*... no one should be a judge in his or her own cause …*". It seems to me that where the High Court initiates estreatment proceedings of its own motion and then adjudicates upon them, the principle of *nemo judex in causa sua* is, as a minimum, engaged. These reflections impel to the conclusion that, *as a general rule*, it would seem preferable that estreatment applications be initiated by the PPS, rather than the court. If, following the reconsideration suggested above, the court is to retain its "own motion" power, it may be desirable that this operate only in a residual, or exceptional, manner.

Crown Courts and Magistrates Courts

[20] The reference to Crown Courts and Magistrates Courts in Order 79, Rule 8(1) is noteworthy. Where an executed recognizance requires the appearance of a Defendant at either of these courts, the recognizance may be estreated by the court where he is scheduled to appear. It is not entirely clear why this power is enshrined in the Rules of the Court of Judicature. Furthermore, it is duplicated in the Crown Court Rules, in Rule 13:

> *"13. Where a recognizance has been entered into by or in respect of a defendant admitted to bail to appear before the Court and it appears to the Court that default has been made in enforcing the conditions of the recognizance, the Court may either of its own motion or on the application of the prosecutor order the recognizance to be estreated in any such sum not exceeding the amount of the recognizance as it thinks fit to order.".*

In passing, the application of the Fines (Ireland) Acts 1851 (Section 10) and 1874 (Section 2) may be noted. Rule 14 of the Crown Court Rules is concerned with the forfeiture of security and is the equivalent of Order 79, Rule 9. The procedure for estreatment in the Crown Court is governed by Rule 15, which reproduces Order 79, Rule 10, placing the onus on the Chief Clerk to give notice to the surety or guarantor. In the Magistrates Court, the relevant provisions are contained in Articles 133-139 of the Magistrates

Courts (Northern Ireland) Order 1981, as amended and Rules 150-153A of the Magistrates Courts Rules. Given the present context, Rule 138(2A) and (3) seem the most pertinent provisions.

Order 57, RCC

[21] The Court of Judicature Rules Committee might also wish to consider the interaction between Order 57 and Order 79. Order 57, Rule 3 contains certain provisions relating to the estreatment of recognizances. There is no cross-reference, or bridging, between the two Orders. Furthermore, it is not entirely clear why Rule 3 is dislocated from Order 79 in this way, without any form of reproduction or express incorporation. There may possibly be some scope for improvement and clarification here, following due reflection on the genesis and rationale of Order 57.

Northern Ireland Law Commission

[22] Finally, I would highlight that the law and practice of bail is one of the five approved law reform projects presently being undertaken by the Northern Ireland Law Commission in its First Programme, in the exercise of its statutory duties under Section 51 of the Justice (Northern Ireland) Act 2002. This is a major undertaking. The Commission will publish a consultation paper in the near future. All potentially interested individuals and organisations will hopefully respond, with a view to ensuring that any proposed new laws are as fully informed and debated as possible.