



JSB Judicial Studies Board
for Northern Ireland

BAIL APPLICATIONS IN THE YOUTH COURT

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ECHR

- **Article 5(3)** provides a safeguard against arbitrary detention and to ensure an independent scrutiny of their reasons for the accused's detention and to ensure release if continued detention is not justified.
- **Article 6** of the European Convention on Human Rights does not apply to applications for bail: the decision to grant or revoke bail is not 'a trial' to which Article 6 applies. The strict rules of evidence do not apply (hearsay, opinion and belief can be stated) and facts do not have to be proved beyond reasonable doubt in a bail hearing.

Beijing Rules

- **Rule 13.1** “detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time” and
- **Rule 13.2** “whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.”

Representation

- The applicant for bail has a right to participate at the hearing personally or through a legal representative.
- This requirement is met by his representation in court and his ability to make representations through live television link.
- The applicant does not have a right to be physically present in court, though the court may so direct.

First Appearance

Where a defendant is brought before the court for the first time in custody there are two aspects to the case:

- Whether to remand

and if remanded

- Whether to release on bail or to detain in custody
- The Court must first be satisfied that the prosecution can connect the accused with the alleged offence.
- The prosecution role is to establish sufficient facts to show the existence of reasonable suspicion that the accused has committed the offence in question.
- The purpose of the remand is to demonstrate in court that the defendant is being legally detained and that further adjournment is necessary in order to investigate the case against him.
- The procedure must ensure equal treatment and be truly adversarial.

Bail Proceedings

Notwithstanding any agreement reached by the prosecution and defence, it is the decision of the court as to whether bail will be granted and, if so, on what conditions, if any.

- There is a presumption that bail will be granted.
- It is only in the most serious cases that bail may be refused by the Youth Court by Article 12 of the Criminal Justice (Northern Ireland) Order 1998.
 - to protect the public it is necessary to remand them in custody and
 - the offence charged is a violent or sexual offence; or
 - in the case of an adult similarly charged who would be liable on conviction on indictment (in the Crown Court) to imprisonment for 14 years or more.

Bail Proceedings

Alternatively

The court may refuse bail

- if the court considers that to protect the public it is necessary to remand him in custody and
 - the offence charged is an indictable offence and
 - the child was on bail at the time he is alleged to have committed the offence, or
 - the child has been found guilty of an indictable offence within two years prior to the date of being charged with the current offence.
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- There is no prohibition on the court to grant bail for any offence other than treason. Section 67 of the Terrorism Act 2000 has limited application.

Refusal of Bail

Bail may be refused if there is:

- a real risk that the Defendant will not turn up for any trial;
- a real risk of the Defendant interfering with or attempting to interfere with witnesses or otherwise obstructing the course of justice (warning other suspects or destroying evidence);
- a real risk of the Defendant committing further offences;
- a real risk his release may give rise to public disorder.

Opposing Bail

- In opposing bail the prosecution must satisfy the court that there is a legitimate reason to refuse bail such as:
 - No permanent address
 - A history of non-attendance at court and the previous issue of warrants of arrest by courts would be persuasive.
 - A criminal record for similar type of offences.
 - The seriousness of the offence is not in itself a ground for refusing bail. It may nonetheless be a factor to be taken into account in considering the proper grounds for refusing bail or in imposing terms on bail.

Granting Bail

- The issue is not as to whether bail should be granted but is whether it is necessary for the accused to be in custody.
- Some of the concerns raised by the prosecution may be addressed by imposing bail terms.
- Conditional bail should be granted as an alternative to pre-trial detention where objections to bail can be met with conditions.

Bail Conditions

Permissible conditions of bail include:

- a requirement to surrender travel documents;
- the imposition of a residence requirement; and
- the provision of a surety. Any such surety must be assessed by reference to the means of the accused.

Surety

- In the case of a child it is normal to require a parent or guardian to stand as a surety to ensure that the child attends court.
- A surety's only obligation is to ensure the child's attendance at court; he is not expected to prevent further offending or interference with witnesses.

Curfew

- A curfew requiring the Defendant to reside at a particular address and to be inside the curtilage of that property between certain hours may be a useful means of reducing the opportunity for further offences.
- The Criminal Justice (Northern Ireland) Order 2008 limits the use of the curfew requirement. A curfew shall not be imposed on a child as a bail condition unless the court considers that, if it does not do so, it would be necessary to remand the child in custody to protect the public;
- Article 43: the curfew must not be for less than two hours nor exceed 12 hours in any one day.

Electronic Monitoring

The 2008 Order makes provision for electronic monitoring of children whilst on bail. The court shall not impose an electronic monitoring requirement as a condition of bail unless the court considers that, if it did not do so, it would be necessary to remand the child in custody to protect the public.

Other Conditions

- The Defendant might be forbidden from consuming intoxicating liquor. Other terms might relate to the abuse of solvents or gas or prescription drugs.
- The Defendant might be forbidden from travelling in private motor cars (other than an identified family car).
- One term that might be imposed relates to education. Care should be taken in setting any term that requires a child to attend school. It may be proper to address the issue by making a term requiring the child to abide by a direction or agreement made by or with the relevant education authority.
- In difficult cases it may be possible to access bail support services through the Youth Justice Agency.

Bail Accommodation

The most significant issue in relation to the grant of bail is finding suitable accommodation for the child.

Refusal of Bail

If bail is refused the reason or reasons for so doing should be stated in open court. The reason or reasons must be relevant and sufficient.

Appeal

- There is now a prosecution right to appeal a decision to grant bail.
- Any such appeal is made to the High Court. The decision to appeal must be made promptly (prior to the actual release of the defendant from custody) and once notified to the court the defendant will not be released until the matter is determined by the High Court.
- A defendant who has been refused bail may apply to the High Court. (Strictly, this is not an appeal.) The High Court's jurisdiction is inherent and original; The High Court may refuse to hear an application unless the Magistrates' Court has refused bail or has imposed excessive conditions.

Renewed Bail Applications

- The European Convention requires that the court should permit renewed applications at reasonable intervals.
- Although the court has a duty to consider granting bail on every application, a previous refusal of bail by a court renders the matter *res judicata*.
- Hutton LCJ stated that “there is a clear rule of law that, where there has been no material change in circumstances, a judge cannot disregard an earlier refusal of bail but is bound by it and should not embark on a fresh hearing into the merits.”

The Criminal Justice (Northern Ireland) Order 2003

- The Order creates a statutory duty that a person released on bail shall be obliged to surrender to custody at the time and place appointed for him to do so.
- When a child appears in court in answer to bail he surrenders to the custody of the court. The court should normally exercise its discretion to avoid putting the child into actual custody.

Breach of Bail

- **Article 5** of the Order creates a criminal offence of failure, without reasonable excuse, to surrender to custody.
- **Article 6(3)** of the 2003 Order enables a constable to arrest without warrant a person on bail if the constable:
 - reasonably believes that the person is not likely to surrender to bail;
 - if the constable reasonably believes that the person is likely to break or has broken any of the conditions of bail; or
 - in a case of bail with one or more sureties, if a surety notifies a constable in writing that he wishes to be relieved of his obligations as surety because he has reasonable grounds to believe that the person is unlikely to surrender to custody.

The Criminal Justice (Northern Ireland) Order 2003

A person arrested without a warrant must be brought before a magistrates' court as soon as practicable.

The court may:

- if it is of the opinion that the person is not likely to surrender to custody or that he has broken or is likely to break any condition of bail:
 - commit him to custody or
 - grant him bail on the same or different conditions.

- Where the court is not of that opinion it shall
 - grant him bail subject to the same conditions (if any) as were originally imposed.

Application under Article 6 of the 2003 Order

- An application under Article 6 of the 2003 Order requires a two stage approach by the court;
 - First, the court must establish whether there has been a breach of a bail condition.
 - Second, if a breach of a condition of bail has been established, the court must decide whether to admit the defendant to bail or remand in custody.
- The 2003 Order permits police custody officers to impose conditions on bail.
- Where a person has been granted bail with conditions by the police, he can apply to the court for a variation of the terms. The court may impose more onerous terms.
- In certain cases the court can reconsider decisions to grant bail or the terms upon which bail has been granted by the court or by the police.

Compassionate Bail

- Where a child has been remanded in custody the court may hear an application for compassionate bail. Typically such applications relate to;
 - attendance at a funeral,
 - a significant religious ceremony,
 - to visit a seriously ill relative or
 - to be present at the birth of a child or shortly thereafter.
- If granted, the terms will normally state a time of release and a time for the applicant to return into custody; other terms may be imposed.
- The grant or refusal of compassionate bail may be challenged in the same way as the grant or refusal of substantive bail.

Remand in Custody

- If a child is to be remanded in custody that remand should normally be to the Juvenile Justice Centre.
- By Article 13(1) of the 1998 Order:
 - if the child has not attained the age of 17 years it shall be to the Juvenile Justice Centre.
 - If the child has attained the age of 17 years it shall be to the Young Offenders Centre.
 - If, however, the child is 17 but not yet 17 years and 6 months (at the date of the first remand in custody) and the child has not had a custodial sentence imposed within the last two years the court shall commit him to the Juvenile Justice Centre (if after consulting a report made by a probation officer, it considers that it is in the best interest of the child to make such an order).
- A child over the age of **15** must be remanded to the Young Offenders Centre if it is considered by the Court that the child is likely to injure himself or others.

2008 Order

The 2008 Order contains a new provision whereby in the case of a child who has attained the age of 17 “the court shall make an order committing the child to a juvenile justice centre (and not a young offenders centre) if the court has been notified by the Secretary of State that no suitable accommodation for that child is available in a young offenders centre”.

A Notice to this effect has been given - **this means all children in custody are now detained in the Juvenile Justice Centre.**

Period of Remand

- Any period spent on remand in custody will count towards any custodial penalty imposed on a finding of guilt.
- The remand period cannot exceed 28 days at a time.
- If the total period on remand exceeds 3 months in total then the Court must state reasons for continuing to remand the child in custody. (The normal Juvenile Justice Centre Order entails a period of 3 months custody and 3 months supervision in the community.)

1998 Order

- Article 28(4) of the 1998 Order permits a child to be brought before a magistrates' court for an application for bail or for a remand.
- It is not necessary to constitute a Youth Court for either of these purposes.
- If a case is being dealt with in the adult court the normal provisions in relation to the identification of the child (in the press and other media) must be maintained.

Q&A