

LAWS OF PITCAIRN, HENDERSON, DUCIE  
AND OENO ISLANDS

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CHAPTER XXXVII

**BAIL ORDINANCE**

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An ordinance to make provision for bail in criminal cases

[24 December 2002]

#### Preliminary

Citation

1. This ordinance may be cited as the Bail Ordinance.

Interpretation

2. In this ordinance, unless the context otherwise requires—

cap.3

**committal for trial** means committal to the Supreme Court under section 65A or section 65B of the Justice Ordinance or a Magistrate's Court under section 70(3)(b) of the Justice Ordinance

**conviction** includes an order; and **convicted** has a corresponding meaning

**Court of Appeal** means the Pitcairn Court of Appeal [as constituted by section 49 of the Constitution of Pitcairn]

**(Amended by Ordinance No. 4 of 2010)**

**drug dealing offence** means the unlawful trafficking in prohibited or restricted drugs and includes the unlawful importation and possession for sale or supply of any such drug prohibited or restricted under any enactment

**[home detention residence** has the meaning given under section 3 of the Sentencing Ordinance]

**(Inserted by Ordinance No. 1 of 2016)**

cap.2

**Island Magistrate** means the person appointed to hold such office by the Governor under section 11(1) and (2) of the Judicature (Courts) Ordinance

**Magistrate's Court** includes a Senior Magistrate or the Island Magistrate presiding over a Magistrate's Court; but does not include a Registrar

**offence** means any act or omission for which anyone can be punished under the criminal law or under any

other enactment containing penal sanctions, whether on conviction on information or on summary conviction

**Registrar** means any Registrar of the Supreme Court or of the Magistrate's Court, as the case may require; and includes a Deputy Registrar

**Senior Magistrate** means a person appointed to hold office as a magistrate by the Governor under section 11(1) and (4) of the Judicature (Courts) Ordinance

**[Superintendent of Prisons** means the person appointed in accordance with section 5 of the Prisons Ordinance]

**[Supervision Officer** has the meaning given under section 3 of the Sentencing Ordinance].

**(Inserted by Ordinance No. 1 of 2016)**

3. This ordinance binds the Crown.

Ordinance binds the Crown

## PART I GENERAL PROVISIONS REGARDING BAIL

4. Unless expressly stated otherwise in this or in any other enactment, any decision regarding the granting of bail under this ordinance is subject to the provisions of this Part.

Application of this Part

5.—(1) A defendant is bailable as of right who is charged with an offence which is not punishable by imprisonment.

Rules as to granting bail

(2) A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years' imprisonment, unless the offence is one which relates to assault on a child, or by a male on a female.

(3) A defendant is bailable as of right who is charged with any offence against the Summary Proceedings Ordinance or any offence which is triable only summarily by virtue of the First Schedule to the Justice Ordinance.

cap. 5

cap. 3

(4) Notwithstanding the provisions of this section, a defendant who is charged with an offence punishable by imprisonment is not bailable as of right if the defendant has been previously convicted of an offence punishable by imprisonment.

(5) Subject to sections 7 to 15, a defendant who is charged with an offence and is not bailable as of right must be released by a Court on reasonable terms and conditions unless the Court is satisfied that there is just cause for continued detention.

6.—(1) In considering whether there is just cause for continued detention, the Court must take into account the following considerations—

Consideration of just cause for continued detention

(a) whether there is a risk that the defendant may fail to appear in Court on the date to which the defendant

has been remanded;

- (b) whether there is a risk that the defendant may interfere with witnesses or other evidence;
- (c) whether there is a risk that the defendant may offend while on bail.

(2) In addition to the considerations in subsection (1), when considering whether there is just cause for continued detention, the Court may take into account—

- (a) the nature of the offence with which the defendant is charged and whether it is a grave or less serious one of its kind;
- (b) the strength of the evidence and the probability of conviction or otherwise;
- (c) the seriousness of the punishment to which the defendant is liable and the severity of the punishment which is likely to be imposed;
- (d) the character and past conduct or behaviour, in particular proven criminal behaviour, of the defendant;
- (e) whether the defendant has a history of offending while on bail or breaching Court orders, including orders imposing bail conditions;
- (f) the likely length of time before the matter comes to hearing or trial;
- (g) the possibility of prejudice to the defence in the preparation of the defence if the defendant is remanded in custody;
- (h) any other special matter which is relevant in the particular circumstances.

(3) When considering an application for bail in respect of a charge of sexual violation or other serious assault or injury, any views of the victim, conveyed in accordance with section 11 of the Victims of Offences Ordinance 2002, must be taken into account.

(4) In deciding, in relation to a defendant charged with any offence involving violence to a person, whether or not to grant bail to the defendant or allow the defendant to go at large, the need to protect the victim of the alleged offence is the paramount consideration.

**7.** No defendant who is charged with an offence involving treason, espionage, piracy, hijacking or terrorism may be granted bail except by order of the Governor or a Supreme Court Judge.

Restriction on bail  
if defendant charged  
with treason or  
espionage

**8.**—(1) This section applies to a defendant of or over the age of seventeen years who is charged with a specified offence (as defined in subsection (2)) and who has one or more previous convictions for a specified offence (whether those convictions were for the same specified offence or for different specified offences).

Restriction on bail if defendant with previous conviction for specified offence charged with further specified offence

(2) In this section, **specified offence** means any offence of the following nature—

- (a) sexual violation;
- (b) murder;
- (c) rape;
- (d) manslaughter;
- (e) attempt to murder;
- (f) wounding with intent to cause grievous bodily harm;



- (g) assault occasioning actual bodily harm;
- (h) aggravated wounding or assault;
- (i) using any firearm against a law enforcement officer;
- (j) commission of crime with firearm;
- (k) robbery;
- (l) aggravated robbery.

(3) No defendant to whom this section applies may be granted bail or allowed to go at large except by order of a Supreme Court Judge or a Senior Magistrate.

(4) No defendant to whom this section applies may be granted bail or allowed to go at large unless the defendant satisfies the Judge or Senior Magistrate that bail or remand at large should be granted.

(5) In particular (but without limiting any other matters in respect of which the defendant must satisfy the Judge or Senior Magistrate under subsection (4)), the defendant must satisfy the Judge or Senior Magistrate on the balance of probabilities that the defendant will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person.

(6) In deciding whether or not to grant bail to a defendant to whom this section applies or allow the defendant to go at large, the need to protect the safety of the public and, where appropriate, the need to protect the safety of the victim or victims of the alleged offending are primary considerations.

**9.** No defendant of or over the age of seventeen years who is found guilty of or pleads guilty to a specified offence (as defined in section 8(2)) and who has one or more previous convictions for a specified offence (whether those convictions were for the same specified offence or for different specified offences) may, while waiting to be sentenced or otherwise dealt with for the first-mentioned specified offence, be granted bail or allowed to go at large.

Restriction on bail if defendant with previous conviction for specified offence found guilty or pleads guilty to further specified offence

**10.—**(1) This section applies to a defendant if—

- (a) the defendant is of or over the age of seventeen years and—
  - (i) is charged with an offence under any law which carries a maximum sentence of three or more years' imprisonment; and
  - (ii) at the time of the alleged commission of the offence was remanded at large or on bail awaiting trial for another offence under any law which carries a maximum sentence of three or more years' imprisonment; and
  - (iii) has at any time previously received a full-time

Further restriction on bail in certain cases

- custodial sentence for one or more offences against any law; or
- (b) the defendant is of or over the age of seventeen years and—
- (i) is charged with an offence which carries a maximum sentence of three or more years' imprisonment; and
  - (ii) has previously received fourteen or more full-time sentences for offences against any law; and
  - (iii) has previously been convicted of an offence which was committed while the defendant was remanded at large or on bail and which carries a maximum sentence of three or more years' imprisonment (whether or not the conviction resulted in any of the full-time custodial sentences referred to in subparagraph (ii)).

(2) For the purposes of subsection (1), a full-time custodial sentence is counted whether or not it was served concurrently with any other one or more sentences.

(3) No defendant to whom this section applies may be granted bail or allowed to go at large except by order of a Supreme Court Judge or a Senior Magistrate.

(4) No defendant to whom this section applies may be granted bail or allowed to go at large unless the defendant satisfies the Judge or Senior Magistrate that bail or remand at large should be granted.

(5) In particular (but without limiting any other matters in respect of which the defendant must satisfy the Judge or Senior Magistrate under subsection (4)), the defendant must satisfy the Judge or Senior Magistrate on the balance of probabilities that the defendant will not, while on bail or at large, commit—

- (a) any offence involving violence against, or danger to the safety of, any other person; or
- (b) burglary or any other serious property offence.

(6) For the purposes of subsection (5), **serious property offence** means an offence against rights of property punishable by imprisonment for a term of more than seven years.

(7) In deciding whether or not to grant bail to a defendant to whom this section applies or allow the defendant to go at large, the need to protect the safety of the public and, where appropriate, the need to protect the safety of the victim or victims of the alleged offending are primary considerations.

**11.—**(1) If a defendant is found guilty or if a defendant pleads guilty, the Court must not grant bail unless it is satisfied

on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

(2) The onus is on the defendant to show cause why bail should be granted.

(3) When considering the interests of justice under subsection (1), the Court may, instead of the considerations in section 6, take into account the following considerations—

- (a) whether the defendant is likely to receive a sentence of imprisonment;
- (b) the likely length of time that will pass before the defendant is sentenced;
- (c) the personal circumstances of the defendant and the defendant's immediate family;
- (d) any other consideration that the Court considers relevant.

(4) If the defendant is unlikely to receive a sentence of imprisonment, this must count against the defendant being remanded in custody.

(5) This section is subject to section 9.

**12.**—(1) If a person is in custody under a conviction and is appealing against the conviction or sentence, or both, the Court must not grant bail unless it is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

Exercise of discretion when considering bail pending appeal

(2) The onus is on the appellant to show cause why bail should be granted.

(3) When considering the interests of justice under subsection (1), the Court may, instead of the considerations in section 6, take into account the following considerations—

- (a) the apparent strength of the grounds of appeal;
- (b) the length of the sentence which has been imposed on the appellant;
- (c) the likely length of time which will pass before the appeal is heard;
- (d) the personal circumstances of the appellant and the appellant's immediate family;
- (e) any other consideration which the Court considers relevant.

*Special provision as to bail of young person remanded or committed for trial or sentence*

**13.**—(1) Notwithstanding anything in any other enactment, no person under the age of sixteen years shall be remanded to a penal institution pending the hearing or trial of any charge or pending sentence.

Granting of bail to defendant under 20 years of age

(2) Notwithstanding anything in any other enactment, no

person who has attained the age of sixteen years but has not attained the age of seventeen years shall be remanded to a penal institution pending the hearing or trial of any charge or pending sentence, except where the person is charged with or has been convicted of an offence triable only by the Supreme Court.

(3) If a Court remands or commits for trial or for sentence a defendant who appears to the Court to be of or over the age of seventeen years but under the age of twenty years, it must release the defendant on bail or otherwise subject to such conditions as it thinks fit.

(4) Subsection (3) is subject to sections 5 (except subsection (5)) 7 to 10, 14 and 15 of this ordinance.

(5) Subject to subsections (1) and (2), this section applies in respect of a defendant who is under the age of seventeen years and who is charged with or convicted of any offence in a Magistrate's Court or the Supreme Court.

(6) Notwithstanding the provisions of subsection (1), the Court may in any case direct that a person under the age of sixteen years be detained in a penal institution if in its opinion no other course is desirable, having regard to all the circumstances.

(7) Notwithstanding the provisions of subsection (1), the Court may remand a person under the age of sixteen years in the custody of the chief executive officer of any recognised child protection authority if in its opinion it is desirable to do so by reason of special circumstances and if it is satisfied that such authority is able and willing to keep the person in custody in accordance with this section.

*Special provisions in respect of bail for  
drug dealing offences*

Bail allowable for  
drug dealing offence  
only by order of  
Judge or Senior  
Magistrate

**14.—**(1) A defendant who is charged with or convicted of a drug dealing offence may be granted bail—

- (a) in any case, by order of a Supreme Court Judge; or
- (b) if the defendant does not have any previous convictions for a drug dealing offence, by order of a Senior Magistrate.

(2) A defendant who is charged with or convicted of a drug dealing offence may be granted bail only under subsection (1).

Bail for drug dealing  
offence may be  
continued or renewed  
by Magistrate's Court

**15.** The Magistrate's Court may, despite the limitation imposed on Senior Magistrates by section 14(1)(b) but without limiting the powers of the Supreme Court, continue or renew bail granted under that section (whether granted by a Supreme Court Judge or a Senior Magistrate—

- (a) on the same or substantially the same conditions as

- were imposed under that section; or
- (b) with the consent of the defendant and the prosecution, on any conditions.

*General provisions relating to bail hearings*

**16.** A Court may, having regard to the interests of the defendant or any other person and to the public interest, order that the whole or any part of an application for bail or an appeal against a bail decision be heard in private.

Bail hearing may be in private

**17.** A Court may make an order prohibiting the publication of any report or description of the hearing or any part of the hearing including, without limitation, all or any of the following—

Court may prohibit publication of matters relating to hearing

- (a) the identity of the defendant applying for bail;
- (b) the decision of the Court on the application;
- (c) the conditions of bail, if bail is granted.

**18.—(1)** In hearing an application for bail, a Court may receive as evidence any statement, document, information or matter that it considers relevant, whether or not it would be otherwise admissible in a Court of law.

Evidence in bail hearing

(2) Notwithstanding subsection (1), when considering the matter described in section 6(2)(b), the Court may receive only evidence that would be admissible in a Court of law.

**PART II  
POLICE BAIL**

**19.—(1)** Any member of the police may, if he or she considers it prudent to do so, take the bail bond of a person who—

Defendant admitted to bail by member of police

- (a) is charged with an offence for which that person may be proceeded against summarily; and
- (b) has been arrested without warrant; and
- (c) cannot practicably be brought immediately before a Court.

(2) In determining whether it is prudent to grant bail under subsection (1) to any person charged with an offence involving the use of violence against any person, the need to protect the victim of the alleged offence is the paramount consideration.

(3) Any bail bond taken under this section—

- (a) may be either with or without sureties as the member of the police thinks fit; and
- (b) must be in such sum or sums as the member of the police thinks sufficient; and
- (c) is subject to the condition that, at a time and place to be specified in the bond, being a time not later

that seven days from the date of the bond, the person bailed attend personally before a Court.

(4) If a person is granted bail under this section, the member of the police who takes the bail bond of the person may, in addition to the conditions that may be imposed under subsection (3), also impose any condition that might be imposed by a Magistrate's Court or Registrar under subsection (2) or subsection (3) of section 29.

(5) A bail bond taken under this section has the same effect as if it had been taken before a Magistrate.

Mode of taking bail  
bond by member of  
police

**20.**—(1) The member of the police taking a bail bond under section 19 must enter in it—

- (a) the names, residence and occupation of the defendant; and
- (b) the names, residence and occupation of the defendant's surety or sureties (if any) entering into the bond; and
- (c) the condition or conditions of the bond; and
- (d) the sums respectively acknowledged.

(2) The bond must be signed by the defendant and the defendant's surety or sureties (if any).

(3) If the member of the police taking the bail bond thinks fit, the defendant may be required to deposit a sum of money equal to the sum acknowledged by the defendant.

(4) If, at the time and place specified in the bond, the defendant does not attend personally and, after hearing the charge in the defendant's absence, the Court convicts the defendant, the sum deposited may be applied in payment or part payment of any amount payable under the conviction.

(5) In a case referred to in subsection (4), if the sum deposited is applied in payment or part payment of any amount payable under the conviction—

- (a) section 23(2) does not apply; and
- (b) if the defendant is entitled to a refund of the sum deposited or any part of it and does not claim it, the member of the police must pay the amount into Court.

Bail and breach of  
protection order

**21.**—(1) If a person is arrested and charged with an offence involving the use of serious violence against any other member of his or her family or household, the person must not be released on bail by a member of the police under section 19 during the 24 hours immediately following the arrest.

(2) Nothing in subsection (1) limits or affects the obligation of the police to bring a person who is charged with an offence before a Court as soon as possible.

(3) If a person to whom subsection (1) applies is not brought before a Court during the 24 hours immediately following the arrest, the person may, at the expiry of that period be released on bail by a member of the police under section 19.

(4) If a person to whom subsection (1) applies has also been charged with one or more other offences arising out of the same incident, the person must not be released on bail by a member of the police under section 19 in respect of any of those offences during the 24 hours immediately following the arrest for such offence.

**22.** A defendant commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, having been released on bail by a member of the police, fails without reasonable excuse to attend personally at the time and the Court specified in the bail bond.

Failure to answer  
police bail

**23.—**(1) A bail bond taken by a member of the police is void if the defendant attends personally to answer the charge brought against him or her at the time and place—

Effect on bond of  
attendance or non-  
attendance of person  
bailed by member of  
police

- (a) specified in the bail bond; or
- (b) to which the hearing has been adjourned.

(2) The Magistrate's Court or Registrar may certify on the back of the bond or of a copy of the bond drawn up and certified by a member of the police the non-performance of the condition of the bond if—

- (a) the hearing has not been adjourned and the defendant does not attend personally at the time and place specified in the bond; or
- (b) the hearing has been adjourned, but the defendant does not attend personally at the time and place to which the hearing has been adjourned.

**24.** If section 23(2) applies to a defendant who has been released on bail by a member of the police, sections 36 and 41 also apply, with any necessary modifications.

Breach of condition  
of police bail

### **PART III BAIL IN SUMMARY PROCEEDINGS**

#### *Application of this Part*

**25.** This Part applies to any proceeding where a defendant is proceeded against summarily.

Application of this  
Part

#### *Granting of bail*

**26.—**(1) In any case referred to in section 27 of the Justice Ordinance (which relates to dealing with a defendant on adjournment), the Magistrate's Court may (instead of allowing

Bail on cap.3  
adjournment

the defendant to go at large or to remand him or her in custody) grant the defendant bail under this section for the period of the adjournment.

(2) A Registrar may exercise the power conferred by subsection (1) to grant bail if—

- (a) the prosecutor does not oppose bail; and
- (b) the offence with which the defendant has been charged—
  - (i) is not punishable by imprisonment; or
  - (ii) is punishable by a term of not more than 5 years (unless the offence charged involves assault on a child or by a man on a woman).

Warrant for detention of defendant remanded on bail

**27.** If the defendant is granted bail under section 26, a Magistrate's Court or Registrar may, and must if the defendant is not released within the period specified in section 30(3)(a)—

- (a) issue a warrant for the detention of the defendant in custody for the period of the adjournment; and
- (b) certify on the back of the warrant the fact that the Magistrate's Court or Registrar has granted the defendant bail and the condition or conditions imposed.

Defendant, if bailable as of right, to be brought before Court on request

**28.—**(1) A defendant who is bailable as of right must, if the defendant so requests, be brought before a Court for the purpose of making an application for bail if—

- (a) the defendant has been remanded in custody; and
- (b) the defendant did not make an application for bail under this ordinance at the time of the remand.

(2) The application may be granted as if it were an application made at the time at which the defendant was remanded.

(3) If bail is granted under this section, the particulars required to be certified by the Magistrate's Court or Registrar under section 27(b) must be certified in writing by the Court granting bail, and forwarded to the Superintendent of the penal institution in which the defendant is detained under the remand warrant.

Conditions of bail

**29.—**(1) Subject to section 30, if a defendant is granted bail, the defendant must be released on condition that the defendant attend personally—

- (a) at the time and place to which the hearing is adjourned; or
- (b) at every time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.

(2) The Magistrate's Court or Registrar may impose, as a

further condition of the defendant's release, a condition that the defendant report to the police at the time or times and at the place or places which the Court or Registrar orders.

(3) Whether or not the Magistrate's Court or Registrar imposes a condition under subsection (2), the Court or Registrar may impose any other condition that the Court or Registrar considers reasonably necessary to ensure that the defendant—

- (a) appears in Court on the date to which the defendant has been remanded; and
- (b) does not interfere with any witness or any evidence against the defendant; and
- (c) does not commit any offence while on bail.

(4) Notwithstanding subsection (3), the Court or Registrar must not require as a further condition of the defendant's release the deposit of any sum or the entering into of any obligation in the nature of a bond, guarantee or surety, whether by the defendant or any other person.

#### *Procedures after grant of bail*

**30.**—(1) If a defendant is granted bail, the Registrar must prepare a notice of bail setting out the conditions of bail imposed by or under section 29.

Release of defendant  
granted bail

(2) The Registrar or (as the case may require) the Magistrate's Court or Superintendent of the penal institution in which the defendant is detained must—

- (a) give the notice of bail to the defendant; and
- (b) be satisfied that the defendant understands the conditions of bail; and
- (c) require the defendant to sign the notice of bail.

(3) If a defendant is granted bail, the Magistrate's Court or Registrar may direct that the defendant be detained in the custody of the Court—

- (a) for such time, not exceeding 2 hours, as may be necessary to enable the notice of bail to be prepared and signed; and
- (b) if, within the period of 2 hours, the defendant is not released (whether by reason of having refused to sign the notice of bail or for any other reason), for such time as may be necessary to enable a warrant to be issued under section 27.

(4) If bail is granted to a defendant who has been remanded in custody and is in custody only under the warrant issued in respect of the remand, the defendant must be released from custody as soon as is reasonably practicable after the defendant has signed the notice of bail.

(5) A copy of the notice of bail must be given to the defendant on his or her release or as soon as practicable after that.

Warrant of  
deliverance

**31.**—(1) Subject to subsection (3), in any case where a warrant has been issued under section 27, a warrant of deliverance in the prescribed form must be issued and sent to the Superintendent of the penal institution in which the defendant is detained.

(2) The warrant of deliverance may be issued by any Magistrate or Registrar on being satisfied that the defendant is entitled to be released and that the requirements of section 30 have been met.

(3) No warrant of deliverance need be issued if the Registrar before whom the defendant signs the notice of bail endorses on the remand a certificate that the defendant has signed the notice of bail and that the defendant is accordingly entitled to be released.

Variation of  
conditions of bail

**32.**—(1) If the defendant has been granted bail, a Magistrate's Court may, on the application of the defendant or the prosecutor, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail.

(2) A Registrar may exercise the power conferred by subsection (1) to make an order if—

- (a) the prosecutor does not object; and
- (b) the offence with which the defendant has been charged—
  - (i) is not punishable by imprisonment; or
  - (ii) is punishable by a term of imprisonment of not more than 5 years (other than an offence involving assault upon a child or by man upon woman).

(3) If a Magistrate's Court or Registrar has, in granting bail to any defendant, imposed the condition that the defendant report to the police at such time or times and at such place or places as the Court or Registrar orders, any Registrar may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to so report.

(4) If a Magistrate's Court or Registrar varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply—

- (a) if the defendant is present at the Court, the Registrar must—
  - (i) as soon as is reasonably practicable prepare a

- new notice of bail setting out the conditions of bail as amended (if any); and
- (ii) be satisfied that the defendant understands the conditions of bail; and
  - (iii) require the defendant to sign the notice of bail.
- (b) if the defendant is not present at the Court, the Registrar must send written notice to the defendant requiring the defendant to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions as amended (if any).
- (5) If, in any case to which subsection (4) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to sign a fresh notice of bail, the Registrar or a Magistrate may issue a warrant for the arrest of the defendant.

**33.—**(1) Any member of the police may arrest without warrant a defendant who has been released on bail by a Magistrate's Court or Registrar or member of the police if the member of the police believes on reasonable grounds that—

- (a) the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) the defendant has contravened or failed to comply with any condition of bail.

(2) A defendant who is arrested under subsection (1) must be brought before a Magistrate's Court as soon as possible.

(3) In any such case, the Magistrate's Court, on being satisfied that the defendant had absconded or was about to abscond or has contravened or failed to comply with any condition of bail, must reconsider the question of bail.

(4) After a defendant has been arrested under subsection (1), the defendant cannot be bailed as of right and is bailable only under section 5(5).

(5) Nothing in this section prevents a member of the police from seeking a warrant to arrest a defendant under section 34.

**34.—**(1) A Magistrate's Court or Registrar may issue a warrant in the prescribed form for the arrest of a defendant if—

- (a) the Magistrate's Court or Registrar is satisfied by evidence on oath that—
  - (i) the defendant has absconded or is about to abscond for the purpose of evading justice; or
  - (ii) the defendant has contravened or failed to comply with any condition of bail; or
- (b) the defendant—

Defendant on bail may be arrested without warrant in certain circumstances

Issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail

- (i) does not attend personally at the time and place specified in the notice of bail or, as the case may be, the bail bond; or
- (ii) does not attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.

(2) A warrant to arrest a defendant under this section must be directed to a member of the police by name or generally to every member of the police. The warrant may be executed by any member of the police.

(3) For the purpose of executing a warrant issued under this section, the member of the police executing it may at any time enter on to any premises, by force if necessary, if the member of the police has reasonable grounds to believe that the defendant against whom it is issued is on those premises.

- (4) The member of the police executing the warrant—
- (a) must have the warrant with him or her; and
  - (b) must produce it on initial entry and, if requested, at any subsequent time; and
  - (c) if he or she is not in uniform and is unknown to the defendant, produce evidence that he or she is a member of the police.

(5) If a defendant is arrested under a warrant issued under this section, subsections (2) to (4) of section 33 apply as if the defendant had been arrested under section 33(1).

Failure to answer bail

**35.** A defendant commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$2,000 who, having been released on bail by a Magistrate's Court or Registrar—

- (a) fails without reasonable excuse to attend personally at the time and the Court specified in the notice of bail; or
- (b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.

Non-performance of condition of bail may be certified and recorded

**36.—**(1) If a defendant who has been released on bail at any time fails to comply with any condition of bail, a Magistrate's Court may certify on the back of the notice of bail or, as the case may require, the bail bond, the non-performance of that condition.

(2) A certificate given by a Magistrate's Court under subsection (1) is, in the absence of proof to the contrary, sufficient evidence for the purposes of section 22 and section 35 that the defendant has failed to comply with the condition of the notice of bail or bail bond specified in the certificate.

(3) In addition to the certification described in subsection (1), if a defendant who has been released on bail at any time fails to comply with any condition of bail, without reasonable excuse, a Magistrate's Court must direct the Registrar that the nature of the condition and the non-performance of the condition be entered in a register to be known as the Criminal Records of the Court.

(4) Notwithstanding subsection (3), the Magistrate's Court may decide not to direct that the failure to comply be entered in the Criminal Records if in the Court's opinion the failure to comply is of such a minor nature that it does not warrant being taken into account when considering an application for bail from the defendant on a subsequent occasion.

(5) Any entry of a non-performance of a bail condition in the Criminal Records shall be admissible in evidence without further proof in the form of an extract or copy of the Criminal Records appearing or purporting to be a true copy thereof and signed by the Registrar as such.

(6) A failure to comply with any condition of bail which is entered in the Criminal Records under subsection (3) may be considered in any subsequent application for bail made by that defendant.

#### *Bail pending sentencing*

**37.**—(1) If the Magistrate's Court finds the defendant guilty, or if the defendant pleads guilty and if the defendant is not sentenced or dealt with in any other manner, then the Court may in its discretion—

Bail pending  
sentencing

- (a) remand the defendant in custody; or
- (b) grant the defendant bail to appear for sentence at some future sitting of the Court when called upon.

(2) In any such case, any Magistrate may, at a subsequent sitting, sentence the defendant or deal with the defendant in any other manner authorised by law.

#### *[Bail on deferment of sentence*

**37A.**—(1) This section applies if the start date of a sentence imposed on an offender is deferred under section 76R or section 95 of the Sentencing Ordinance.

Bail on deferment of  
sentence

(2) If this section applies, the court that defers the start date of the offender's sentence must grant the offender bail.

(3) An offender who is granted bail under this section must be released on condition that the offender must—

- (a) if the sentence is deferred under section 76R of the Sentencing Ordinance, —
  - (i) go to and remain at the home detention residence at the expiry of the period of

deferral specified by the court, unless absent in accordance with section 76C(3) (a) or (b) of that Ordinance; and

- (ii) advise a Supervision Officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence; or
- (b) if the sentence is deferred under section 95 of the Sentencing Ordinance, surrender himself or herself to the Superintendent of Prisons at the expiry of the period of deferral specified by the court.

(4) The provisions of sections 29 to 36 and 38 to 42 of this Ordinance, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.]

**(Inserted by Ordinance No. 1 of 2016)**

*Appeals on question of bail*

Appeals from  
decisions of Island  
Magistrate

**38.**—(1) Either party to any proceedings which are heard by the Magistrate's Court presided over by the Island Magistrate has the same rights of appeal under section 39 as the party would have had if the Court which heard the proceedings had been presided over by a Senior Magistrate.

(2) For the purposes of an appeal to which subsection (1) applies, sections 39 to 45 apply, subject to such modifications as may be required or directed by the Court.

Appeal from decision  
of Magistrate's Court  
relating to bail

**39.**—(1) If a Senior Magistrate refuses to grant bail to a defendant (whether before or after conviction), the defendant may appeal to the Supreme Court against that refusal.

(2) If a Senior Magistrate grants bail to a defendant (whether before or after conviction), the prosecutor may appeal to the Supreme Court against that decision.

(3) If, in respect of any grant of bail to a defendant (whether before or after conviction)—

- (a) a Senior Magistrate has imposed any condition of bail or has refused to impose any condition of bail, or any particular condition of bail; or
- (b) a Senior Magistrate has, on an application made under section 32(1), made an order varying or revoking any condition of bail or substituting or imposing any other condition of bail or refused to make such an order,

the defendant or the prosecutor may appeal to the Supreme Court against the imposition of that condition of bail or, as

the case may be, against that refusal or against the decision in respect of that application.

(4) For the purposes of an appeal under this section, the failure of a Senior Magistrate to impose any condition of bail or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed, is deemed to be a refusal to impose the condition.

(5) No person—

- (a) who has been refused bail by a Senior Magistrate; or
- (b) in respect of whom a Senior Magistrate has imposed any condition of bail or refused to impose any condition of bail or any particular condition of bail—

may seek bail in the Supreme Court except in accordance with this section.

(6) An appeal under this section is by way of rehearing.

**40.**—(1) Subject to subsections (2) and (4), Part II of the Judicature (Appeals in Criminal Cases) Ordinance, as far as it is applicable and with all necessary modifications, applies to an appeal under section 39.

Procedural provisions  
cap.4 relating to  
appeal under s. 39

(2) Notwithstanding the provisions of any other enactment or rule of law, on the hearing of an appeal under section 39 it is not necessary to produce—

- (a) any note or transcript of the evidence adduced to the Magistrate's Court appealed from; or
- (b) any note of the reasons for the decision appealed against; or



(c) any copy of any note or transcript referred to in paragraph (a) or paragraph (b).

(3) Nothing in section 21 of the Judicature (Appeals in Criminal Cases) Ordinance applies in respect of an appeal under section 39.

(4) No decision of a Senior Magistrate appealed against under section 39 is suspended merely because notice of that appeal has been given.

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(5) An appeal under section 39, which is not heard before the date on which the decision appealed against ceases to have any effect, lapses on that date and is deemed to have been dismissed by the Supreme Court for want of prosecution.

(6) If, in the case of an appeal under section 39(2), the defendant does not appear at the hearing of the appeal, the Supreme Court may, if it thinks fit, issue a warrant for the arrest of the defendant.

**41.—**(1) If a Magistrate directs that the non-performance of a bail condition be entered in the Criminal Records under section 36, the defendant may, within 28 days of the direction being made, appeal against the direction to the Supreme Court.

Appeal against entry of non-performance of condition of bail in Criminal Records

(2) After considering an appeal under subsection (1), the Supreme Court may order that—

- (a) the direction stand; or
- (b) the direction be amended; or
- (c) the direction be revoked.

(3) There is no further right of appeal against a direction to enter the non-performance of a condition of bail in the Criminal Records than that given by this section.

(4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

**42.—**(1) If, on an appeal under section 39, the Supreme Court determines that bail should not be granted or, as the case may be, should not be continued, a warrant for the detention of the defendant in custody must be issued out of the Supreme Court and signed by a Judge.

Execution of decision of Supreme Court on appeal relating to bail

(2) The person who executes the warrant must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.

(3) If, on an appeal in respect of any condition of bail, the Supreme Court varies or revokes any condition of bail, or substitutes or imposes any other condition of bail, the following provisions apply

- (a) if the defendant is present at the Supreme Court, the Registrar of the Supreme Court must—

- (i) as soon as is reasonably practicable prepare a new notice of bail setting out the conditions of bail as amended (if any); and
  - (ii) satisfy himself or herself that the defendant understands the conditions of bail; and
  - (iii) require the defendant to sign the notice of bail;
- (b) if the defendant is not present at the Supreme Court, the Registrar of the Magistrate's Court appealed from must send written notice to the defendant requiring him or her to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions, (if any) required to give effect to the Supreme Court's decision.

(4) If, in any case to which subsection (3) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh notice of bail, the Registrar of the Magistrate's Court appealed from must refer the matter to a Senior Magistrate who may issue a warrant for the arrest of the defendant.

*Bail pending appeal against conviction or sentence*

Granting of bail to appellant who is in custody

**43.**—(1) This section applies if a person is in custody under a conviction and is appealing against the conviction or sentence, or both.

(2) If the appellant is in custody only under the conviction to which the appeal relates, the appellant is bailable at any time before the hearing of the appeal—

- (a) at the discretion of the Senior Magistrate who presided over the Magistrate's Court whose determination is appealed against; or
- (b) if that Senior Magistrate is not available, at the discretion of some other Senior Magistrate.

(3) Subject to the provisions of section 30 (as applied by subsection (4)), if an appellant is granted bail, the appellant must be released on condition that the appellant attend personally at the Supreme Court on the day on which the appeal is to be heard and on any day to which the hearing may from time to time be adjourned.

(4) If an appellant is granted bail under this section, the provisions of sections 29 to 36, and 41, as far as they are applicable and with any necessary modifications, apply as if the appellant were a defendant remanded in custody who had been granted bail.

(5) If an appellant is granted or refused bail under this section, or any decision is made under section 32(1) (as applied

by subsection (4)) in respect of any appellant, the provisions of sections 39 and 41, as far as they are applicable and with all necessary modifications, apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail.

(6) For the purposes of this section, an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given that another sentence or term of imprisonment is to follow the sentence imposed on that conviction and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed.

**44.** The time during which an appellant is released on bail pending his or her appeal does not count as part of any term of detention under his or her sentence, whether it is the sentence passed by the Magistrate's Court or the sentence passed or varied by the Supreme Court or the sentence imposed in the circumstances described in section 76 of the Parole Ordinance 2002.

Time on bail pending appeal not to be taken as time served

**45.** An appellant who has been released from custody on bail pending the hearing of the appeal may surrender himself or herself and apply to a Senior Magistrate for the discharge of bail and the Senior Magistrate may then issue a warrant in the prescribed form for the arrest of the appellant and for his or her committal to a penal institution for the unexpired term of the sentence originally imposed.

Surrender of appellant released on bail

#### **Part IV** **Bail when proceedings taken by way of information**

##### *Application of this part*

Application of this part

**46.** This Part applies to any proceeding where a defendant is proceeded against by way of information filed in the Supreme Court.

##### *Bail and preliminary inquiry*

**47.—(1)** The following provisions of Part III, with the necessary modifications, apply with respect to proceedings to which Part VII of the Justice Ordinance (which relates to preliminary hearings of information offences) applies, as if the references in those provisions to the hearing were references to the preliminary inquiry or the proceedings under section 59A of the Justice Ordinance, as the case may be, namely—

Application of provisions of Part III

- (a) section 26 (bail on adjournment);
- (b) section 27 (warrant for detention of defendant)

cap. 3

cap. 3

- remanded on bail);
- (c) section 28 (bringing before the Court of a defendant bailable as of right who requests bail);
  - (d) section 29 (conditions of bail);
  - (e) section 30 (release of defendant granted bail);
  - (f) section 32 (variation of conditions of bail);
  - (g) section 33 (defendant on bail may be arrested without warrant in certain circumstances);
  - (h) section 34 (issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail);
  - (i) section 35 (failure to answer bail);
  - (j) section 36 certification and recording of non-performance of condition of bail
  - (k) section 41 (appeal against entry of non-performance of condition of bail in Criminal Records).

(2) If, by virtue of any of the provisions applied by subsection (1) with respect to proceedings to which this Part applies, a defendant is granted or refused bail, or any Magistrate's Court varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or impose any condition of bail, the provisions of sections 39 and 40, as far as they are applicable and with all necessary modifications, apply accordingly.

Additional bail provisions if proceedings brought cap.3 under section 59A of Justice Ordinance

**48.**—(1) If a defendant pleads guilty before or during the preliminary inquiry and proceedings are adjourned under section 59A of the Justice Ordinance, then the Magistrate's Court, in its discretion, may grant bail to the defendant.

(2) If the defendant is granted bail, the provisions of Part III apply.

Bail if evidence adduced at preliminary hearing sufficient for defendant to be committed for trial or for sentence and defendant then pleads guilty

**49.**—(1) If proceedings are adjourned for sentencing after a guilty plea then, subject to any Supreme Court bail determination that is for the time being in force in respect of the defendant, the Magistrate's Court may, in its discretion, grant bail to the defendant.

(2) If the defendant is granted bail, the provisions of Part III apply.

#### *Bail after committal*

Release on bail of defendant committed for trial

**50.**—(1) If a defendant committed for trial is granted bail, sections 27, 28(3), 29 to 36 and 41, as far as they are applicable and with any necessary modifications apply as if—

- (a) that person were a defendant remanded in custody who had been granted bail; and
- (b) for section 29(1) there were substituted subsection

(2) of this section.

(2) Subject to section 30, if a defendant is granted bail, the defendant must be released on condition that—

- (a) the defendant attend personally and report to the Registrar of the Court specified in the notice of bail, at the place specified, on the date during the sittings of that Court then current for the trial of criminal cases at the place as may be notified by the Registrar in writing to the defendant or to his or her counsel and also to the sureties under any surety bond; or
- (b) the defendant report on the first day of the next sitting of the Court specified in the notice of bail, at the place specified and that the defendant attend personally after the first day of those next sittings on such other day or days (being a day or days that occur during the then current sittings of the Court or during the next or any subsequent such sittings) as may be notified by the Registrar in writing, to the defendant or his or her counsel.

(3) If the defendant has been committed for trial and is granted bail, any variation of the conditions of bail under section 32 (as applied by this section) may be made at any time before the first date on which the defendant is required in accordance with this section to report to the Registrar of the Supreme Court or Magistrate's Court, as the case may be.

**51.**—(1) Except where otherwise expressly required by any other enactments, if a defendant is committed for sentence, then the committing Court may, in its discretion, grant bail to the defendant.

Release on bail of  
defendant committed  
for sentence

(2) If the defendant is granted bail, sections 26, 29 to 36, and 41 as far as they are applicable and with any necessary modifications apply as if—

- (a) that person were a defendant remanded in custody who had been granted bail; and
- (b) for all the words in paragraphs (a) and (b) of section 29(1) there were substituted the words “at the Supreme Court at the place and on the date specified in the notice of bail”.

**52.**—(1) If a defendant committed for trial or sentence is granted bail, the Magistrate's Court must certify on the back of the warrant issued under section 66(1) of the Justice Ordinance its consent to the defendant being bailed and the condition or conditions imposed.

Further provisions  
applying to defendant  
cap.3 committed for  
trial or sentence

(2) No warrant issued under section 66(1) of the Justice Ordinance ceases to have effect by reason only that the

cap.3

defendant is released on bail but the warrant is deemed to be suspended during any period that the defendant is on bail.

(3) If, by virtue of any of the provisions of this section or of Part III (as applied by sections 50 and 51), a defendant who has been committed for trial or for sentence is granted or refused bail or any Magistrate's Court varies, revokes, substitutes or imposes any condition of bail or refuses to vary, revoke, substitute or impose any condition of bail, sections 39 and 40, as far as they are applicable and, with all necessary modifications, apply accordingly.

*General provisions relating to bail in information proceedings*

Detention while bail bond prepared and signed

**53.** If a defendant is granted bail by the Supreme Court, a Supreme Court Judge may direct that the defendant be detained in the custody of the Supreme Court—

- (a) for such time, not exceeding two hours, as may be necessary to enable the bail bond to be prepared and signed; and
- (b) if, within that period of two hours, the defendant is not released (whether by reason of having refused to sign the bail bond or for any other reason), for such time as may be necessary to enable the issue of a warrant for the detention of the defendant in custody.

Variation of conditions of bail

**54.—**(1) Subject to subsection (3), if a defendant is granted bail by the Supreme Court, a Supreme Court Judge may, on the application of the prosecutor or the defendant, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail.

(2) Subject to subsection (3), if the Supreme Court has, in granting bail to a defendant, imposed the condition that the defendant report to the police at such time or times and at such place or places as the Court orders, any Registrar of the Supreme Court or of a Magistrate's Court may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to report.

(3) No application may be made under subsection (1) or subsection (2) in respect of a bail bond which has been entered into in any case where sureties are required, unless the sureties to the bail bond have consented in writing to the making of the application.

(4) If the Supreme Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply—

- (a) if the defendant is present at the Supreme Court, the Registrar must—
  - (i) as soon as is reasonably practicable prepare a new bail bond setting out the conditions of bail as amended (if any); and
  - (ii) satisfy himself or herself that the defendant granted bail understands the conditions of bail; and
  - (iii) require the defendant to sign the bail bond;
- (b) if the defendant is not present at the Supreme Court, the Registrar of the Court which varied or revoked or substituted or imposed the condition must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions as amended (if any).

(5) If, in any case to which subsection (4) applies, the defendant fails without reasonable excuse to attend at the time and place required or fails to enter into a fresh bail bond, the Registrar must refer the matter to a Judge who may issue a warrant for the arrest of the defendant.

**55.**—(1) If, in respect of a defendant who has been released on bail by the Court of Appeal or the Supreme Court or a Magistrate’s Court, any member of the police believes on reasonable grounds that

- (a) the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) the defendant has contravened or failed to comply with any condition of bail;

the member of the police may arrest the defendant without warrant.

(2) A defendant who is arrested under subsection (1) must be brought before a Supreme Court Judge or a Senior Magistrate as soon as possible.

(3) In any such case, the Judge or Magistrate, on being satisfied that the defendant had absconded or was about to abscond or had contravened or failed to comply with any condition of bail, must reconsider the question of bail.

(4) A defendant arrested under this section is, after that, bailable only at the discretion of the Judge or Magistrate.

(5) This section does not apply if section 56 applies.

(6) Nothing in this section prevents a member of the police from seeking a warrant to arrest a defendant under section 57.

**56.**—(1) If a defendant has been released on bail under

Defendant on bail  
may be arrested  
without warrant in  
certain circumstances

Arrest of defendant  
charged with drug  
dealing offence

section 14, any member of the police may arrest the defendant without warrant if

- (a) the member of the police believes on reasonable grounds that the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) the police have been notified in writing by any surety for the defendant that the surety believes that the defendant has absconded or is about to abscond for the purpose of evading justice and the member of the police is satisfied that there are reasonable grounds for that belief; or
- (c) the member of the police believes, on reasonable grounds, that the defendant has broken, is breaking or is about to break any condition of bail (whether imposed under section 29 or otherwise); or
- (d) the police have been notified in writing by any surety for the defendant that the surety believes that the defendant has broken, is breaking or is about to break any such condition of bail and the member of the police is satisfied that there are reasonable grounds for that belief.

(2) A defendant who has been arrested under subsection (1) must be brought before a Supreme Court Judge as soon as possible.

(3) If a defendant is brought before a Supreme Court Judge under subsection (2), the Judge must, if satisfied on the balance of probabilities that the defendant has absconded or was about to abscond, remand the defendant in custody.

(4) If a defendant is brought before a Supreme Court Judge under subsection (2), the Judge may—

- (a) if satisfied on the balance of probabilities that the defendant has broken, was breaking or was about to break any condition of bail, remand the defendant in custody; or
- (b) release the defendant.

(5) If a defendant is released under subsection (4)(b), the defendant's bail bond continues in force in all respects as if the defendant had not been arrested under subsection (1).

(6) Notwithstanding subsections (4)(b) and (5), if a defendant was arrested under subsection (1)(d), the Judge may release the defendant under subsection (4)(b) only if—

- (a) the surety consents in writing to the release; or
- (b) a fresh bail bond is issued.

(7) Nothing in this section prevents a member of the police from seeking a warrant to arrest a defendant under section 57.

**57.—**(1) The Supreme Court or a Magistrate's Court or

a Registrar of the Supreme Court or a Magistrate's Court may issue a warrant in the prescribed form for the arrest of a defendant if the Supreme Court or Magistrate's Court or Registrar is satisfied by evidence on oath that—

- (a) the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) the defendant has contravened or failed to comply with any condition of bail.

(2) A warrant to arrest a defendant under this section must be directed to a member of the police by name or generally to every member of the police. The warrant may be executed by any member of the police.

(3) For the purposes of executing a warrant issued under this section, the member of the police executing it may at any time enter on to any premises, by force if necessary, if the member of the police has reasonable grounds to believe that the defendant against whom it is issued is on those premises.

(4) The member of the police executing the warrant—

- (a) must have the warrant with him or her; and
- (b) must produce it on initial entry and, if requested, at any subsequent time; and
- (c) if he or she is not in uniform and is not known to the defendant, produce evidence that he or she is a member of the police.

(5) If a defendant is arrested under a warrant issued under this section—

- (a) subsections (2) to (4) of section 55 apply as if the defendant had been arrested under section 55(1); or
- (b) in the case of a person who is charged with or convicted of a drug dealing offence and who has been released on bail in relation to that offence, subsections (2) to (6) of section 56 apply as if the defendant had been arrested under section 56(1).

**58.**—(1) If a defendant against whom an information has been filed or who has been committed for sentence does not attend to plead to the information or, as the case may require, to be sentenced, the Court before which the defendant would have been tried or by which the defendant would have been sentenced may issue a warrant for the defendant's arrest, whether or not the defendant is under bond to attend.

Bench warrant

(2) If the Court which issued the warrant is not sitting for the trial of criminal cases when the defendant is arrested, the defendant must be brought before a Magistrate who may remand the defendant in custody to attend before the Court at its next sittings or may grant the defendant bail.

(3) If the defendant has failed without reasonable excuse

to attend according to his or her bond, the defendant is not bailable as of right.

(4) If a defendant who has been committed for sentence is arrested pursuant to a warrant issued under subsection (1), the defendant must be brought before a Supreme Court Judge at the most convenient place.

Failure to answer bail

**59.** A defendant commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$2,000 who having been released on bail by the Court of Appeal or the Supreme Court or a Magistrate's Court—

- (a) fails without reasonable excuse to attend personally at the time and Court specified in the bail bond or, as the case may require, the notice of bail; or
- (b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.

Non-performance of condition of bail may be certified and recorded

**60.—**(1) If a defendant who has been released on bail at any time fails to comply with any condition of bail, a Supreme Court Judge or a Magistrate may certify on the back of the bail bond or, as the case may require, the notice of bail the non-performance of that condition.

(2) A certificate given by a Supreme Court Judge or a Magistrate under subsection (1) is, in the absence of proof to the contrary, sufficient evidence for the purposes of section 59 that the defendant has failed to comply with the condition of the bail bond or notice of bail specified in the certificate.

(3) In addition to the certification described in subsection (1), if a defendant who has been released on bail at any time fails without reasonable excuse, to comply with any condition of bail, a Supreme Court Judge or a Magistrate must direct the Registrar of the Court to enter the nature of the condition and the non-performance of the condition in the Criminal Records or any other Register that the Registrar chooses to keep for the purpose.

(4) Notwithstanding subsection (3), the Judge may decide not to direct that the failure to comply be entered into the Criminal Records or other Register referred to in that subsection if in the Judge's opinion the failure to comply is of such a minor nature that it does not warrant being taken into account when considering an application for bail from the defendant on a subsequent occasion.

(5) Access to any entry of a non-performance of a bail condition in the Criminal Records or other Register referred to in subsection (3) and the evidential status of the entry is

governed by the provisions of section 36(5) of this ordinance.

(6) A failure to comply with any condition of bail that is entered into the Criminal Records or other Register referred to in subsection (3) may be considered in any subsequent application for bail made by that person.

**61.** If an order is made for the trial of a defendant at a substituted Court under section 15B of the Judicature (Courts) Ordinance, the Judge of the Court of committal may grant the defendant bail or commit the defendant to custody pending the defendant's trial.

Powers of Court of committal as to custody or bail of defendant when order made for trial at substituted Court

*Bail pending sentencing*

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**62.** If the Court finds the defendant guilty or if the defendant pleads guilty and if no motion in arrest of judgment is made or if the Supreme Court finds against the defendant on any such motion and if the defendant is not sentenced or dealt with in any other way authorised by law, then, unless otherwise required by any enactment, the Court may, in its discretion—

Bail pending sentencing

- (a) remand the defendant in custody; or
- (b) discharge the defendant from custody on the defendant's entering into a bail bond, with or without sureties as it thinks fit, to appear for sentence at some future sitting of the Court or when called upon.

*[Bail on deferment of sentence*

**62A.—**(1) This section applies if the start date of a sentence imposed on an offender is deferred under section 76R or section 95 of the Sentencing Ordinance.

Bail on deferment of sentence

(2) If this section applies, the court that defers the start date of the offender's sentence must grant the offender bail.

(3) An offender who is granted bail under this section must be released on condition that the offender must —

- (a) if the sentence is deferred under section 76R of the Sentencing Ordinance, —
  - (i) go to and remain at the home detention residence at the expiry of the period of deferral specified by the court, unless absent in accordance with 76C(3) (a) or (b) of that Ordinance; and
  - (ii) advise a Supervision Officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence; or
- (b) if the sentence is deferred under section 95 of the

Sentencing Ordinance, surrender himself or herself to the Superintendent of Prisons at the expiry of the period of deferral specified by the court.

(4) The provisions of sections 54, 55, 57, 59 and 60 of this Ordinance, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.]

**(Inserted by Ordinance No. 1 of 2016)**

*Appeals on question of bail*

Appeal from decision of Supreme Court relating to bail

**63.**—(1) Subject to subsection (4), this section applies to any decision made (whether under any enactment or rule of law or otherwise) by a Supreme Court Judge to—

- (a) grant or refuse bail to a defendant; or
- (b) impose or substitute or revoke or vary any condition of bail; or
- (c) refuse to impose any condition of bail or any particular condition of bail; or
- (d) refuse to vary or revoke any condition of bail.

(2) Either the prosecutor or the defendant may appeal to the Court of Appeal against any decision to which this section applies.

(3) For the purposes of an appeal under this section, the failure of a Supreme Court Judge to impose any condition of bail or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed, is deemed to be a refusal to impose the condition.

(4) Nothing in this section applies in respect of any decision made by a Supreme Court Judge if that decision was made on appeal from any decision of a Magistrate's Court.

Procedural provisions relating to appeal under s. 63

**64.**—(1) A defendant wishing to appeal under section 63 must file notice of the defendant's intention to appeal with the Registrar of the Court of Appeal within ten days after the date of the decision to be appealed against.

(2) An appeal under section 63 which is not heard before the date on which the decision appealed against ceases to have any effect lapses on that date and is deemed to have been dismissed by the Court of Appeal for want of prosecution.

(3) No decision of a Supreme Court Judge appealed against under section 63 is suspended merely because notice of that appeal has been given.

(4) On an appeal under section 63, the Court of Appeal may confirm the decision appealed against or vary it or set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place.

**65.**—(1) If a Supreme Court Judge or a Magistrate directs that the non-performance of a bail condition be entered into the Criminal Records or other Register referred to in section 60(3), the defendant may, within 28 days of the direction being made, appeal against the direction to the Supreme Court or the Court of Appeal, as the case may require.

Appeal against entry of non-performance of condition of bail into Criminal Records or other Register

(2) After considering an appeal under subsection (1), the Supreme Court or Court of Appeal may order that—

- (a) the direction stand; or
- (b) the direction be amended; or
- (c) the direction be revoked.

(3) There is no further right of appeal against a direction to enter the non-performance of a condition of bail into the Criminal Records or other Register referred to in section 60(3) than that given by this section.

(4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

**66.**—(1) If, on an appeal under section 63 against a refusal to grant bail to a defendant, the Court of Appeal determines that bail should be granted, the Court of Appeal must order that the defendant be released on bail subject to such conditions as the Court of Appeal thinks fit.

Execution of decision of Court of Appeal on appeal relating to bail

(2) If, on an appeal under section 63 in respect of any condition of bail, the Court of Appeal cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of



Appeal's decision.

(3) If, in any case to which subsection (2) applies, the defendant fails without reasonable excuse to attend at the time and place required or fails to enter into a fresh bail bond, the Registrar must refer the matter to a Supreme Court Judge who may issue a warrant for the arrest of the defendant.

(4) If, on an appeal under section 63 against a grant of bail, the Court of Appeal determines that bail not be granted or, as the case may be, not be continued, a warrant for the detention in custody of the defendant must be issued out of the Court of Appeal and signed by a Judge of the Court.

(5) The person who executes the warrant under subsection (4) for the detention in custody of the defendant must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.

(6) A defendant to whom subsection (4) applies and who is not in custody may be arrested without warrant by any member of the police or any officer of a penal institution.

*Bail pending appeal against conviction or sentence*

**67.**—(1) This section applies if a person is in custody under a conviction and is appealing against the conviction or sentence, or both, to the Court of Appeal.

Granting of bail to appellant and custody pending appeal

(2) The Court of Appeal or the Judge who presided at the trial in the Court below may, if it or the Judge thinks fit, on the application of an appellant and on such terms and subject to such conditions as the Court or Judge thinks fit, grant bail to the appellant pending the determination of the appeal, if the appellant is in custody only under the conviction to which the appeal relates.

(3) The time during which an appellant is released on bail pending the determination of the appeal does not count as part of any term of detention under the appellant's sentence, whether it is the sentence passed by the Court from which the appeal is brought or the sentence passed or varied by the Court of Appeal or the sentence imposed in the circumstances described in section 76 of the Parole Ordinance 2002.

(4) If a case is stated under Part III of the Judicature (Appeals in Criminal Cases) Ordinance, this section applies to any person in relation to whose conviction the case is stated as it applies to an appellant.

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(5) For the purposes of this section, an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 72 of the Parole Ordinance 2002 that another sentence or

term of imprisonment is to follow the sentence imposed on that conviction and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed.

Intermediate effects  
of appeal

**68.**—(1) In every case where the Court of Appeal directs a new trial, that Court must issue a warrant for the detention of the defendant pending the trial.

(2) The Court may in its discretion, either at the same time or at any subsequent time, grant bail to the defendant on such terms and subject to such conditions as it thinks fit.

(3) If no application for bail has been made to the Court of Appeal, the defendant may at any time apply to a Supreme Court Judge or a Senior Magistrate (as the case may require) who may in his or her discretion grant bail on such terms and subject to such conditions as he or she thinks fit.

(4) While a defendant is released on bail under subsection (2), the warrant for his or her detention is suspended.

#### **PART V MISCELLANEOUS PROVISIONS**

Rules

**69.**—(1) The Governor may make rules regulating the practice and procedure of any Court in proceedings under this ordinance.

(2) Until rules are made under this section, or if they are made so far as they do not extend, the existing practice and procedure in England in relation to bail is not affected as far as it is not altered by or inconsistent with the provisions of this ordinance.

S. 24 of cap.3  
cap.3 to be read and  
construed with this  
ordinance

**70.** The provisions of section 24 of the Justice Ordinance shall be read and construed together with and in accordance with this ordinance.