

Version No. 093

Bail Act 1977

No. 9008 of 1977

Version incorporating amendments as at 1 January 2010

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An Act to make better Provision relating to Bail and to amend the **Children's Court Act 1973**, the **Coroners Act 1958**, the **Crimes Act 1958**, the **Crown Proceedings Act 1958**, the **Summary Offences Act 1966**, the **Magistrates (Summary Proceedings) Act 1975**, and the **Rape Offences (Proceedings) Act 1976**.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title and commencement

- (1) This Act may be cited as the **Bail Act 1977**.
- (2) The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the Government Gazette.

2 Repeals and savings

- (1) The Acts mentioned in the Schedule to the extent thereby expressed to be repealed or amended are hereby repealed or amended accordingly.

- (2) Except as in this Act expressly or by necessary implication provided—
- (a) all persons things and circumstances appointed existing or continuing under any such Acts immediately before the commencement of this Act, shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed or amended;
 - (b) in particular and without affecting the generality of the foregoing paragraph, such repeal or amendment shall not disturb the continuity of status operation or effect of any application determination order warrant recognizance affidavit declaration certificate liability or right made effected issued granted given entered into fixed accrued incurred or acquired or existing or continuing by or under such Acts before the commencement of this Act.

3 Definitions

In this Act unless inconsistent with the context or subject-matter—

bail justice means—

- (a) bail justice appointed under section 120 of the **Magistrates' Court Act 1989**; or
- (b) bail justice by virtue of holding a prescribed office under section 121 of the **Magistrates' Court Act 1989**;

S. 3 def. of *bail justice* inserted by No. 51/1989 s. 142(a), substituted by No. 35/2002 s. 25(1).

S. 3 def. of *cocaine* inserted by No. 89/1986 s. 4(a), repealed by No. 64/1998 s. 4.

* * * * *

court means court or judge and, in any circumstances where a member of the police force or other person is empowered under the provisions of this Act to grant bail, includes that member or person;

S. 3 def. of *court* amended by Nos 19/1989 s. 16(Sch. item 7.1), 51/1989 s. 142(b).

drug of dependence has the same meaning as in the **Drugs, Poisons and Controlled Substances Act 1981**;

S. 3 def. of *drug of dependence* inserted by No. 89/1986 s. 4(b).

legal practitioner means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

S. 3 def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 9).

* * * * *

S. 3 def. of *heroin* inserted by No. 89/1986 s. 4(b), repealed by No. 64/1998 s. 4.

prison includes remand centre or youth justice centre under the **Children, Youth and Families Act 2005** and any other place where persons may be detained in legal custody and *imprisonment* has a corresponding interpretation;

S. 3 def. of *prison* amended by Nos 10087 s. 3(1)(Sch. 1 item 4), 16/1987 s. 4(3)(Sch. 1 item 3), 56/1989 s. 286(Sch. 2 item 2.1), 48/2006 s. 42(Sch. item 4.1).

undertaking means undertaking in writing signed by an accused or an accused and his surety or sureties that the accused will attend upon an adjourned hearing or upon his trial or for sentence and surrender himself into custody.

S. 3 def. of *undertaking* amended by No. 68/2009 s. 97(Sch. items 11.1, 11.2).

4 Accused held in custody entitled to bail

(1) Any person accused of an offence and being held in custody in relation to that offence shall be granted bail—

S. 4(1)(a)
amended by
No. 51/1989
s. 142(c).

- (a) if it is not practicable to bring him before a bail justice or the Magistrates' Court within 24 hours after he is taken into custody;
- (b) during any postponement of the hearing of a charge for the offence or whilst he is awaiting trial; or

S. 4(1)(c)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (c) where his case is adjourned by a court for inquiries or a report or whilst he is awaiting sentence except where the court is satisfied that it would not be desirable in the public interest to release the accused pending completion of the inquiries or receipt of the report or pending sentence.

(2) Notwithstanding the generality of the provisions of subsection (1) a court shall refuse bail—

S. 4(2)(a)
substituted by
No. 10084
s. 18(1)(a).

- (a) in the case of a person charged with treason or murder except in accordance with section 13;

S. 4(2)(aa)
inserted by
No. 89/1986
s. 4(c),
amended by
No. 48/1997
s. 48(b).

- (aa) in the case of a person charged with—

S. 4(2)(aa)(i)
amended by
No. 48/1997
s. 48(a)(i)(ii),
substituted by
No. 61/2001
s. 13(1).

- (i) an offence under section 71, 71AA, 72 or 72A of the **Drugs, Poisons and Controlled Substances Act 1981** or an offence of conspiring to commit any of those offences under section 79(1) of that Act; or

-
- (ia) an offence of trafficking in relation to a commercial quantity of a drug of dependence under section 71 of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** or an offence of cultivating a narcotic plant under section 72 of that Act in circumstances where the offence is committed in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that narcotic plant or an offence of conspiring to commit either of those offences under section 79(1) of that Act; or
- (ii) an offence under section 231(1), 233A or 233B(1) of the Customs Act 1901 of the Commonwealth as in force immediately before the commencement of the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 of the Commonwealth in circumstances where the offence is committed in relation to narcotic goods within the meaning of that Act in respect of a quantity that is not less than the commercial quantity (as defined in section 70(1) of the **Drugs, Poisons and Controlled Substances Act 1981**) applicable to the drug of dependence constituted by those narcotic goods; or

S. 4(2)(aa)(ia) inserted by No. 35/2002 s. 28(Sch. item 1.1).

S. 4(2)(aa)(ii) substituted by No. 64/1998 s. 5, amended by No. 93/2005 s. 13(1)(a)(b).

s. 4

S. 4(2)(aa)(iii)
inserted by
No. 93/2005
s. 13(2).

(iii) an offence under section 307.1, 307.2, 307.5, 307.6, 307.8 or 307.9 of the Criminal Code of the Commonwealth in circumstances where the offence is committed in relation to a substance in respect of a quantity that is not less than the commercial quantity (as defined in section 70(1) of the **Drugs, Poisons and Controlled Substances Act 1981**) applicable to the drug of dependence as defined in that Act constituted by that substance—

* * * * *

unless the court is satisfied that exceptional circumstances exist which justify the grant of bail;

S. 4(2)(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

(b) if the accused is in custody pursuant to the sentence of a court for some other cause;

S. 4(2)(c)
repealed by
No. 20/2004
s. 10.

* * * * *

(d) if the court is satisfied—

S. 4(2)(d)(i)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

(i) that there is an unacceptable risk that the accused if released on bail would—
fail to surrender himself into custody in answer to his bail;
commit an offence whilst on bail;
endanger the safety or welfare of members of the public; or
interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;

* * * * *

S. 4(2)(d)(ii)
amended by
No. 10087
s. 3(1)(Sch. 1
item 4),
repealed by
No. 16/1987
s. 12(Sch. 2
item 3(a)).¹

(iii) that it has not been practicable to obtain sufficient information for the purpose of deciding any question referred to in this subsection for want of time since the institution of the proceedings against him.

(2A) Despite subsection (2)(b), a court is not required to refuse bail in the case of an accused who is serving a sentence of imprisonment for some other cause but any bail granted must be subject to the condition that the person will not be released on bail before he or she is entitled to be released under a parole order made, or which may be made, in respect of him or her;

S. 4(2A)
inserted by
No. 57/1989
s. 4(1)(a),
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

(3) In assessing in relation to any event mentioned in subsection (2)(d)(i) whether the circumstances constitute an unacceptable risk the court shall have regard to all matters appearing to be relevant and in particular, without in any way limiting the generality of the foregoing, to such of the following considerations as appear to be relevant, that is to say—

- (a) the nature and seriousness of the offence;
- (b) the character, antecedents, associations, home environment and background of the accused;

S. 4(3)(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

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S. 4(3)(c)
amended by
Nos 84/1997
s. 4(a),
68/2009
s. 97(Sch.
item 11.1).

(c) the history of any previous grants of bail to the accused;

S. 4(3)(d)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

(d) the strength of the evidence against the accused;

S. 4(3)(e)
inserted by
No. 84/1997
s. 4(b).

(e) the attitude, if expressed to the court, of the alleged victim of the offence to the grant of bail.

S. 4(4)
amended by
Nos 9158 s. 2,
68/2009
s. 97(Sch.
item 11.1).

(4) Where the accused is charged—

(a) with an indictable offence that is alleged to have been committed while he was at large awaiting trial for another indictable offence;

S. 4(4)(b)
repealed by
No. 57/1989
s. 4(1)(b),
new s. 4(4)(b)
inserted by
No. 95/1994
s. 7.

(b) with an offence against section 21A(1) of the **Crimes Act 1958** (stalking) and—

S. 4(4)(b)(i)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

(i) the accused has within the preceding 10 years been convicted or found guilty of an offence against that section in relation to any person or an offence in the course of committing which he or she used or threatened to use violence against any person; or

S. 4(4)(b)(ii)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

(ii) the court is satisfied that the accused on a separate occasion used or threatened to use violence against the person whom he or she is alleged to have

stalked, whether or not the accused has been convicted or found guilty of, or charged with, an offence in connection with that use or threatened use of violence; or

- (ba) with an offence against section 37 or 123 of the **Family Violence Protection Act 2008** of contravening a family violence intervention order or family violence safety notice (as the case requires) in the course of committing which the accused is alleged to have used or threatened to use violence and—
- (i) the accused has within the preceding 10 years been convicted or found guilty of an offence in the course of committing which he or she used or threatened to use violence against any person; or
- (ii) the court is satisfied that the accused on a separate occasion used or threatened to use violence against the person who is the subject of the order, whether or not the accused has been convicted or found guilty of, or charged with, an offence in connection with that use or threatened use of violence; or
- (bb) with an offence against section 32 of the **Stalking Intervention Orders Act 2008** of contravening an order in the course of committing which the accused is alleged to have used or threatened to use violence and—
- (i) the accused has within the preceding 10 years been convicted or found guilty of an offence in the course of committing which he or she used or

S. 4(4)(ba) inserted by No. 95/1994 s. 7, amended by Nos 52/2008 s. 233, 68/2009 s. 97(Sch. item 11.1).

S. 4(4)(ba)(i) amended by No. 68/2009 s. 97(Sch. item 11.1).

S. 4(4)(ba)(ii) amended by No. 68/2009 s. 97(Sch. item 11.1).

S. 4(4)(bb) inserted by No. 68/2008 s. 63, amended by No. 68/2009 s. 97(Sch. item 11.1).

S. 4(4)(bb)(i) amended by No. 68/2009 s. 97(Sch. item 11.1).

threatened to use violence against any person; or

S. 4(4)(bb)(ii) amended by No. 68/2009 s. 97(Sch. item 11.1).

- (ii) the court is satisfied that the accused on a separate occasion used or threatened to use violence against the person who is the subject of the order, whether or not the accused has been convicted or found guilty of, or charged with, an offence in connection with that use or threatened use of violence; or

S. 4(4)(c) amended by Nos 9690 s. 2(a), 68/2009 s. 97(Sch. item 11.1).

- (c) with an offence of aggravated burglary under section 77 of the **Crimes Act 1958** or any other indictable offence in the course of committing which the accused or any person acting in concert with the accused is alleged to have used or threatened to use a firearm, offensive weapon, or explosive within the meaning of the said section 77; or

S. 4(4)(caa) inserted by No. 10/2003 s. 10.

- (caa) with an offence of arson causing death under section 197A of the **Crimes Act 1958**; or

S. 4(4)(ca) inserted by No. 9690 s. 2(b), substituted by No. 10002 s. 8(3), amended by No. 89/1986 s. 4(d)(i)(ii), substituted by No. 61/2001 s. 13(2).

- (ca) with an offence under section 71AB, 71AC or 72B of the **Drugs, Poisons and Controlled Substances Act 1981** or an offence of conspiring to commit any of those offences under section 79(1) of that Act;

S. 4(4)(cab) inserted by No. 35/2002 s. 28(Sch. item 1.2).

- (cab) subject to subsection (2)(aa), with an offence of trafficking in a drug of dependence under section 71 of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled**

Substances (Amendment) Act 2001 or an offence of cultivating a narcotic plant under section 72 of that Act or an offence of conspiring to commit either of those offences under section 79(1) of that Act;

- (cb) subject to subsection (2)(aa), with an offence under section 231(1), 233A or 233B(1) of the Customs Act 1901 of the Commonwealth, as in force immediately before the commencement of the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 of the Commonwealth, in relation to a commercial or trafficable quantity of narcotic goods within the meaning of that Act; or

S. 4(4)(cb) inserted by No. 89/1986 s. 4(e), amended by No. 93/2005 s. 13(3).

- (cc) subject to subsection (2)(aa), with an offence under section 307.1, 307.2, 307.5, 307.6, 307.8 or 307.9 of the Criminal Code of the Commonwealth; or

S. 4(4)(cc) inserted by No. 93/2005 s. 13(4).

- (d) with an offence against this Act—

the court shall refuse bail unless the accused shows cause why his detention in custody is not justified and in any such case where the court grants bail the court—

- (i) if constituted by a judge or magistrate, shall include in the order a statement of reasons for making the order; or

S. 4(4)(d)(i) amended by Nos 16/1986 s. 30, 19/1989 s. 16(Sch. item 7.2), 51/1989 s. 142(d).

- (ii) in any other case, shall, as prescribed by regulations, record and transmit a statement of reasons for making the order.

- (5) In granting bail a court may impose conditions in accordance with section 5.

5 Conditions of release on bail

S. 5(1)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (1) A court considering the release of an accused on bail shall consider the conditions for his release in the following sequence, namely—

S. 5(1)(a)
amended by
No. 68/2009
s. 97(Sch.
items 11.1,
11.3).

- (a) the release of the accused on his own undertaking without sureties and without deposit of money or security to attend;

S. 5(1)(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (b) the release of the accused on his own undertaking with a deposit of money or other security of stated value;

S. 5(1)(c)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (c) the release of the accused upon his entering into an undertaking with a surety or sureties of stated value;

S. 5(1)(d)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (d) the release of the accused on his own undertaking with a deposit of money or other security of stated value and a surety or sureties of stated value—

but shall not make the conditions for his entry into bail any more onerous for the accused than the nature of the offence and the circumstances of the accused appear to the court to be required in the public interest.

S. 5(2)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (2) Where a court considers that the imposition of special conditions is necessary to secure that—

S. 5(2)(a)
amended by
No. 68/2009
s. 97(Sch.
items 11.1,
11.4).

- (a) an accused attends in accordance with his bail and surrenders himself into custody;

(b) an accused does not commit an offence whilst on bail;

S. 5(2)(b) amended by No. 68/2009 s. 97(Sch. item 11.1).

(c) an accused does not endanger the safety or welfare of members of the public; or

S. 5(2)(c) amended by No. 68/2009 s. 97(Sch. item 11.1).

(d) an accused does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person—

S. 5(2)(d) amended by No. 68/2009 s. 97(Sch. item 11.1).

the court shall require the accused to comply with such conditions as the court imposes for any or all of such purposes.

* * * * *

S. 5(3) amended by No. 10087 s. 3(1)(Sch. 1 item 4), repealed by No. 16/1987 s. 12(Sch. 2 item 3(b)).²

(4) Where a court grants bail upon the postponement of a hearing or while the accused is awaiting trial and the court is of opinion that an inquiry ought to be made into the physical or mental condition of the accused the bail may be made subject to a condition that the accused undergo medical examination by a medical practitioner registered under the **Health Professions Registration Act 2005** at an institution or place specified in the undertaking or by a specified registered medical practitioner and, if bail is subject to such a condition, the court shall cause to be sent to the institution, place, or practitioner a statement of the reason for the inquiry and of any information before the court about his physical or mental condition.

No. 8731 s. 72(b).
S. 5(4) amended by Nos 23/1994 s. 118(Sch. 1 item 4.1(a)(b)), 97/2005 s. 182(Sch. 4 item 4), 68/2009 s. 97(Sch. item 11.1).

s. 5A

5A Power to return accused to youth justice centre

S. 5A
(Heading)
amended by
Nos 48/2006
s. 42(Sch.
item 4.2),
68/2009
s. 97(Sch.
item 11.5)..

S. 5A
inserted by
No. 21/2005
s. 60.

S. 5A(1)
amended by
No. 68/2009
s. 97(Sch.
item 11.6).

S. 5A(1)(a)
amended by
Nos 48/2006
s. 42(Sch.
item 4.3),
68/2009
s. 97(Sch.
item 11.6)..

S. 5A(1)(c)
amended by
No. 68/2009
s. 97(Sch.
item 11.6).

S. 5A(1)(d)(i)
amended by
No. 68/2009
s. 97(Sch.
item 11.6).

(1) Despite anything in this Act, if—

(a) the accused in a criminal proceeding in the Supreme Court or the County Court is a person undergoing a sentence of detention in a youth justice centre; and

(b) the Supreme Court or the County Court, as the case may be, adjourns the proceeding—
the Supreme Court or the County Court may, instead of remanding the accused in custody—

(c) direct that the accused be returned to the custody of the Secretary to the Department of Human Services until the end of the sentence of detention or the resumption of the hearing, whichever is the sooner; and

(d) either—

(i) grant the accused bail on a special condition that bail is not to be entered until the end of the sentence of detention; or

- (ii) refuse bail and direct that the accused be brought before the Supreme Court or the County Court, as the case may be, at a later date for it to consider the granting of bail.

S. 5A(1)(d)(ii) amended by No. 68/2009 s. 97(Sch. item 11.6).

- (2) In this section, *the end of the sentence of detention* means the time when the accused is released from custody, whether on parole or otherwise.

S. 5A(2) amended by No. 68/2009 s. 97(Sch. item 11.6).

Note

See also section 333 of the **Criminal Procedure Act 2009**.

Note to s. 5A amended by No. 68/2009 s. 97(Sch. item 11.7).

6 Person bailed to surrender himself into custody

An accused who is granted bail is under a duty to attend in accordance with his bail and surrender himself into custody.

S. 6 amended by No. 68/2009 s. 97(Sch. items 11.1, 11.8).

7 Opposing bail

- (1) Where the informant or prosecutor or any person appearing on behalf of the Crown intends to oppose the grant of bail to any person he shall so state to the court and the court may, before or at any time during the course of the application for bail, make an order directing that the evidence taken, the information given, and the representations made and the reasons (if any) given or to be given by the court shall not be published by any means—

- (a) if a committal proceeding is held—before the accused in respect of whom the application is made is discharged; or

S. 7(1)(a) amended by No. 68/2009 s. 97(Sch. items 11.1, 11.9).

- (b) if the accused in respect of whom the application is made is tried or committed for trial—before the trial is ended.

S. 7(1)(b) amended by No. 68/2009 s. 97(Sch. item 11.1).

S. 7(2)
amended by
No. 9554
s. 2(2)(Sch. 2
item 18).

- (2) Any person who fails without lawful excuse, the proof of which lies upon him, to comply with an order made under subsection (1) shall be guilty of an offence against this Act.

Penalty: 15 penalty units or imprisonment for three months.

S. 8
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 4.1) (ILA
s. 39B(1)).

8 Application for bail

- (1) In any proceedings with respect to bail—
- (a) the court may, subject to paragraph (b), make such inquiries on oath or otherwise of and concerning the accused as the court considers desirable;
 - (b) the accused shall not be examined or cross-examined by the court or any other person as to the offence with which he is charged and no inquiry shall be made of him as to that offence;
 - (c) the informant or prosecutor or any person appearing on behalf of the Crown may, in addition to any other relevant evidence, submit evidence, whether by affidavit or otherwise—
 - (i) to prove that the accused has previously been convicted of a criminal offence;
 - (ii) to prove that the accused has been charged with and is awaiting trial on another criminal offence;
 - (iii) to prove that the accused has previously failed to surrender himself into custody in answer to bail; or
 - (iv) to show the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the accused;

S. 8(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

-
- (d) the court may take into consideration any relevant matters agreed upon by the informant or prosecutor and the accused or his or her legal practitioner; and
- (e) the court may receive and take into account any evidence which it considers credible or trustworthy in the circumstances.
- (2) Nothing in subsection (1)(a) prevents the application of Part 3.10 of the **Evidence Act 2008**.

S. 8(d)
amended by
No. 35/1996
s. 453(Sch. 1
item 8.1).

S. 8(2)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 4.1).

9 Surety for bail

- (1) Every surety to an undertaking of bail shall be a person who has attained the age of eighteen years who is not under any disability in law and is worth not less than the amount of the bail in real or personal property or both.
- (2) Where an accused is required to provide a surety or sureties regard may be had in considering the suitability of a proposed surety to the following in addition to any other relevant matters—
- (a) the surety's financial resources;
- (b) his character and any previous convictions; and
- (c) his proximity (whether in point of kinship place of residence or otherwise) to the person for whom he is to be surety.
- (3) Before admitting an accused to bail with a surety or sureties the court or other person authorized by section 27 shall—
- (a) be satisfied of the sufficiency of the means of the surety or sureties and for this purpose may require the surety or sureties (as the case may be) to—

S. 9(1)
amended by
No. 9075
s. 5(2).

S. 9(2)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

S. 9(3)
substituted by
No. 9158
s. 3(a),
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

S. 9(3)(a)(ii)
amended by
Nos 51/1989
s. 142(e),
11/2001
s. 3(Sch.
item 5).

- (i) lodge in cash the amount of the bail; or
- (ii) lodge by way of security for the amount of the bail a savings pass-book, deposit stock card or other document for operating an account which shows a credit balance equal to or in excess of the amount of the bail together with a document signed by the surety authorizing the withdrawal from such account of the amount of the bail and the payment of that amount to the Prothonotary, the Registrar of the County Court or the principal Registrar of the Magistrates' Court (as the case requires); and

S. 9(3)(b)
amended by
No. 84/1997
s. 5(1).

- (b) require the surety or sureties to make before it or him (as the case may be) or any other court or person authorised by section 27 an affidavit of justification for bail.

S. 9(3A)
inserted by
No. 84/1997
s. 5(2),
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 6.1).

- (3A) For the purposes of subsection (3), a surety may appear before a court by audio visual link or audio link in accordance with Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**.

S. 9(3B)
inserted by
No. 84/1997
s. 5(2),
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (3B) If a surety appears before a court by audio visual link or audio link, the undertaking may be constituted by the undertaking signed by the accused and a copy of that document transmitted to the surety by any means and signed by the surety.
- (4) Where a surety desires so to do he may make a declaration of justification instead of an affidavit of justification.

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- (5) A court or other person—
- S. 9(5)**
amended by
No. 9158
s. 3(b)(i).
- (a) before which or whom an affidavit of justification is made may administer an oath to the deponent and shall ask any questions which are required by any Act or law to be asked in the circumstances or which appear to it or him to be necessary; or
- S. 9(5)(a)**
amended by
No. 9158
s. 3(b)(ii).
- (b) before which or whom a declaration of justification is made may take the declaration and shall ask any questions which are required by any Act or law to be asked in the circumstances or which appear to it or him to be necessary.
- S. 9(5)(b)**
amended by
No. 9158
s. 3(b)(iii).
- (6) Where it appears to a court that a surety for bail has sworn an affidavit of justification or made a declaration of justification which he knew to be false in a material particular the court may declare the bail to be forfeited and issue its warrant for the apprehension of the accused.
- S. 9(6)**
amended by
No. 68/2009
s. 97(Sch.
item 11.1).
- (7) Where a surety has pursuant to subsection (3) lodged by way of security a pass-book, stock card or other document the surety may at any time lodge in cash the amount of the bail and he shall thereupon be entitled to the return of the pass-book, stock card or other document together with any signed withdrawal document and the court or person with whom the cash is lodged shall make an endorsement upon the affidavit or declaration of justification for bail made by the surety to the effect that the nature of the security has been changed.
- S. 9(7)**
inserted by
No. 9158
s. 3(c).
-

s. 10

S. 9(8)
inserted by
No. 9158
s. 3(c).

- (8) Where a surety has pursuant to this section lodged in cash the amount of the bail the court or person with whom the cash is lodged shall issue a receipt for the money.

No. 6231
s. 460.

10 Where impracticable to bring person arrested before court

- (1) Where a person is arrested and it is not practicable to bring him before a court forthwith after he is taken into custody a member of the police force of or above the rank of sergeant or for the time being in charge of a police station—

- (a) shall inquire into the case; and
(b) may, and if it is not practicable to bring the person arrested before a court within 24 hours after he is taken into custody, shall, unless the provisions of this Act otherwise require, discharge the person on bail in accordance with the Act.

S. 10(1A)
inserted by
No. 32/2006
s. 91(1).

- (1A) If a person is arrested under the **Infringements Act 2006** by the sheriff or a person authorised under section 84(5) of that Act and it is not practicable to bring the person before a court forthwith after the person is taken into custody the sheriff or a person authorised under section 84(5) of that Act—

- (a) shall inquire into the case; and
(b) may, and if it is not practicable to bring the person arrested before a court within 24 hours after the person is taken into custody, shall, unless the provisions of this Act otherwise require, discharge the person on bail in accordance with this Act.

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- (2) Where a member of the police force refuses to discharge a person from custody under subsection (1) or the sheriff or a person authorised under section 84(5) of the **Infringements Act 2006** refuses to release a person from custody under subsection (1A) or any person held in custody objects to the amount fixed for bail or any condition of bail the member of the police force, the sheriff or a person authorised under section 84(5) of the **Infringements Act 2006** (as the case requires) shall advise the person in custody that he is entitled, should he so desire, to apply to a bail justice for discharge from custody or for variation of the amount of bail or conditions of bail or shall give to the person a statement in writing setting forth the provisions of this subsection and if the person elects so to apply the member, the sheriff or a person authorised under section 84(5) of the **Infringements Act 2006**—
- (a) shall cause the person to be brought before a bail justice as soon as practicable;
- (b) shall cause to be produced before the bail justice the warrant, file or papers referred to in subsection (3); and
- (c) shall abide by the decision of the bail justice in relation to that person.
- (3) A member of the police force or the sheriff or a person authorised under section 84(5) of the **Infringements Act 2006** (as the case requires) refusing to discharge a person from custody under this section shall endorse on the warrant file or papers relating to that person or in any register or record of persons in custody his reasons for refusing to discharge that person from custody.
- S. 10(2)**
amended by
Nos 51/1989
s. 142(f),
32/2006
s. 91(2)(a)–(c).
- S. 10(2)(a)**
amended by
No. 51/1989
s. 142(f).
- S. 10(2)(b)**
amended by
No. 51/1989
s. 142(f).
- S. 10(2)(c)**
amended by
No. 51/1989
s. 142(f).
- S. 10(3)**
amended by
No. 32/2006
s. 91(3).

11 Cash deposit as security for penalty

- (1) Where a person is apprehended for an offence against any of the provisions of sections 13, 14, 16 and 17 of the **Summary Offences Act 1966** a member of the police force of or above the rank of sergeant or for the time being in charge of a police station shall in addition to any power he may have to release such person on bail have power to release him on his making a deposit of such amount not exceeding \$50 as the member of the police force thinks reasonable as security for the payment of any penalty that may be imposed as punishment for his offence.
- (2) Upon releasing a person under this section the member of the police force shall notify him that he is required to appear before a court at a certain time and place and that if he fails to appear accordingly the charge against him may be heard in his absence and that the deposit will be appropriated to the payment or part payment of any fine that may be imposed by the court and that any surplus thereof will be paid into the Consolidated Fund but that if he appears to answer to the charge any surplus will be refunded to him.
- (3) Notwithstanding anything to the contrary in any Act or law, where any person who is released in accordance with the provisions of this section fails to appear at the time and place notified to him the charge against him may be heard and determined in his absence and the deposit lodged by him shall be appropriated to the payment or part payment of any fine that may be imposed by the court and any surplus thereof shall be paid into the Consolidated Fund.

- (4) Where a person who is released in accordance with the provisions of this section appears to answer to the charge against him any surplus shall be refunded to him.
- (5) A statement in the prescribed form purporting to be signed by the member of the police force who released a person under this section shall be prima facie evidence that the accused was released and notified in accordance with the provisions of subsections (1) and (2).

S. 11(5)
amended by
No. 68/2009
s. 97(Sch.
item 11.10).

12 Court or bail justice to grant or refuse bail

No. 8731 s. 24.

- (1) Where a person is apprehended, whether by virtue of a warrant or otherwise, and brought before a court or bail justice and application is made by or on behalf of the informant to remand the person or to commit him to prison during an adjournment the court or bail justice before which he is first brought shall either grant bail for the attendance of the person on the day to which he is remanded or the case adjourned or shall refuse bail and shall certify on the warrant of remand or the warrant of commitment (as the case may be)—

S. 12(1)
amended by
Nos 84/1997
s. 6(1),
68/2009
s. 97(Sch.
item 11.11).

- (a) where bail is granted—consent to the person being bailed, stating also the amount of any surety or sureties to be required, and any special conditions applicable to the release of that person; or
- (b) where bail is refused—a statement of such refusal and of the grounds for refusal.

- (1A) A bail justice must not remand a person referred to in subsection (1) in custody for a period of more than 8 clear days.

S. 12(1A)
inserted by
No. 84/1997
s. 6(2).

s. 13

S. 12(2)
amended by
Nos 51/1989
s. 142(g)(i),
68/2009
s. 97(Sch.
item 11.12).

(2) Where a person charged with an indictable offence is committed to prison to take his trial for the offence the magistrate committing him shall either grant bail for the attendance of the person upon his trial or shall refuse bail and shall certify on the warrant of commitment—

S. 12(2)(a)
amended by
No. 51/1989
s. 142(g)(i)(ii).

(a) where the magistrate grants bail—his or her consent to the person being bailed, stating also the amount of any surety or sureties to be required, and any special conditions applicable to the release of that person; or

S. 12(2)(b)
amended by
Nos 9427
s. 6(1)(Sch. 5
item 7),
51/1989
s. 142(g)(i)(iii).

(b) where the magistrate refuses bail—a statement of such refusal and of the grounds for refusal.

No. 8731
s. 24.

13 Court may grant bail

S. 13
amended by
No. 9690 s. 3,
substituted by
No. 10084
s. 18(1)(b).

S. 13(1)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

(1) Subject to subsection (2), a court may grant bail to an accused, whether or not that person has attained the age of 21 years.

(2) Bail shall not be granted to a person charged with treason or murder unless—

(a) in the case of a person charged with treason—the Supreme Court or a Judge of the Supreme Court; or

- (b) in the case of a person charged with murder—
- (i) the Supreme Court;
 - (ii) a judge of the Supreme Court; or
 - (iii) the magistrate who commits the person for trial for murder—

S. 13(2)(b)(iii)
amended by
No. 10257
s. 77.

is satisfied that exceptional circumstances exist which justify the making of such an order.

14 Refusal of bail where person seriously injured

S. 14
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

Where, in the case of an injury to a person, doubt exists with respect to the degree or quality of the offence by reason of the fact that it is uncertain whether the person injured will die or recover, when application is made for bail by or on behalf of the accused a court may refuse to grant the application until it is satisfied that the person injured will not die from the injury.

15 Conditions of bail

No. 8731 s. 25.

- (1) Every undertaking for the attendance of a person at the hearing of a charge for an offence or at the first hearing in a committal proceeding or upon a trial for an offence shall be conditioned for the attendance of the person charged at the time and place of the hearing or trial and that he will then surrender himself and not depart without leave of the court and will as often as leave is given return at the time appointed by the court on granting leave and again surrender himself.
- (2) Where a certificate of bail is endorsed on a warrant and it is inconvenient for sureties to attend at the prison to sign the undertaking of bail any bail justice may make a duplicate of the certificate on the warrant and upon the certificate

S. 15(1)
amended by
No. 68/2009
s. 97(Sch.
item 11.13).

S. 15(2)
amended by
Nos 51/1989
s. 142(h),
68/2009
s. 97(Sch.
item 11.1).

being produced to some other bail justice that bail justice may witness the signature of the surety or the signatures of the sureties on the undertaking in conformity with the certificate, and upon the undertaking being transmitted to the officer in charge of the prison and produced together with the certificates on the warrant to any bail justice attending or being at the prison the bail justice may thereupon witness the signature of the accused on the undertaking and may order him to be discharged out of custody.

S. 15(3)
amended by
No. 51/1989
s. 142(i).

- (3) Where a court admits to bail a person who then is in prison the court shall send to or cause to be lodged with the officer in charge of the prison a warrant of deliverance requiring the discharge of the person admitted to bail if he is detained for no other lawful cause and upon the warrant of deliverance being delivered to or lodged with the officer in charge of the prison he shall forthwith obey the warrant.

No. 8731
ss 26, 27.

16 Extension of bail

- (1) Every undertaking may with the consent of any person or persons offering himself or themselves as surety or sureties contain a provision for its extension without any further consent of the surety or sureties upon such postponements or adjournments of the hearing as are from time to time directed, but nothing in this subsection shall prejudice in any way the right of any person offering himself as surety to elect to be bound with respect to an undertaking which may be extended only with his consent given at the time of the extension and no court shall refuse to admit a person to bail on the ground only that a person offering himself as surety has so elected.

- (2) Where a hearing is adjourned or postponed the time and place for the commencement of the sitting to which the hearing is adjourned or postponed shall be stated openly by the court, and the court—
- (a) with the consent of the sureties; or
 - (b) where the undertaking of bail so provides—
without the consent of the sureties—

may extend the bail of the person charged, and thereupon the person charged shall be bound to attend at that time and place without entering into a fresh undertaking and the sureties shall be bound accordingly, or the court may make such order as to bail and as to the commitment of the person charged to prison until bail is forthcoming as the court thinks fit.

- (3) Where a person charged with an offence or apprehended under a warrant is remanded in custody or committed to safe custody during an adjournment or released on bail and a court is satisfied—
- (a) if the accused is remanded in custody or committed to safe custody, the accused is by reason of illness, accident or other sufficient cause unable to attend personally; or
 - (b) if the accused is released on bail, the accused is not present for sufficient cause—

S. 16(3)
amended by
Nos 20/2004
s. 11, 68/2009
s. 97(Sch.
items 11.1,
11.14).

S. 16(3)(a)
inserted by
No. 20/2004
s. 11,
amended by
No. 68/2009
s. 97(Sch.
items 11.1,
11.14(a)).

S. 16(3)(b)
inserted by
No. 20/2004
s. 11,
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

on the day on which he is required to attend the court may, in the absence of the accused, order him to be further remanded for such time or

s. 16A

committed to safe custody for such time as the court thinks fit and may order any undertaking to be extended so as to require the attendance of the accused at every time and place to which the accused is remanded or the hearing is adjourned.

S. 16(4)
amended by
No. 51/1989
s. 142(j).

- (4) An endorsement on an undertaking to the effect that it has been extended by a court pursuant to the provisions of this section and stating the time and place at which the person charged is bound to attend and purporting to be signed by the person constituting the court shall be proof until the contrary is shown that the bail was so extended.

S. 16A
inserted by
No. 20/2004
s. 12,
amended by
No. 68/2009
s. 97(Sch.
items 11.1.
11.15).

16A Written notice of extension of bail

A court extending bail must cause to be given to the accused and the surety or sureties, if any, for the attendance of the accused notice in writing stating that—

- (a) bail has been extended by the court in the absence of the accused and the surety; and
- (b) the date, time and place at which the accused is bound to attend; and
- (c) the consequences of failure to attend at that time and place.

S. 16A(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

17 Written notice of conditions of bail

S. 17(1)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (1) A court admitting an accused to bail shall cause to be given to the accused a notice in writing setting forth the obligations of the accused concerning the conditions of his bail and the consequences of his failure to comply with those conditions and shall be satisfied before releasing the accused that he understands the nature and extent of the conditions of his bail and the consequences of failure to comply with them.

- (2) A court admitting an accused to bail with a surety or sureties for his attendance and surrender into custody shall cause to be given to the surety or sureties notice in writing of the obligations of the accused concerning the conditions of his bail and the consequences of his failure to comply with those conditions and shall be satisfied before releasing the accused that the surety or each of the sureties (as the case requires) understands the nature and extent of the obligations of the accused under the conditions of his bail and the consequences of his failure to comply with them.

S. 17(2)
amended by
No. 68/2009
s. 97(Sch.
items 11.1,
11.16).

18 Appeal against refusal of bail or conditions of bail

No. 8731 s. 33.

- (1) Where a person is detained in custody pending the summary hearing of a charge or a committal proceeding or a trial and that person has been refused bail by a bail justice or the Magistrates' Court or, having been granted bail by a bail justice or the Magistrates' Court, objects to some amount fixed or condition imposed for his discharge from custody he may make application—

S. 18(1)
amended by
Nos 16/1986
s. 30, 51/1989
s. 142(k)(i),
68/2009
s. 97(Sch.
item 11.17).

- (a) to the Magistrates' Court; or

S. 18(1)(a)
amended by
No. 16/1986
s. 30,
substituted by
No. 51/1989
s. 142(k)(ii).

- (b) to the court to which he would be required to surrender himself under the conditions of the bail—

for an order granting bail or varying the amount of any bail fixed or condition imposed (as the case requires).

- (2) In addition to and without in any way derogating from the provisions of subsection (1) a person who has been granted bail but is unable within 24 hours after the grant of bail to meet the

S. 18(2)
amended by
No. 51/1989
s. 142(l).

requirements for his release on bail may make application to the bail justice granting the bail or to the Magistrates' Court for variation of the amount or conditions of the bail.

S. 18(3)
amended by
Nos 16/1986
s. 30, 51/1989
s. 142(m)(i)(ii).

- (3) If it appears to the court or bail justice on the hearing of an application under this section that having regard to all the circumstances of the case and of the applicant including in particular the considerations described in section 4(3) it is reasonable to vary the original order the court or bail justice may grant bail to the applicant, either with or without a surety or sureties, or in a reduced amount and with or without any conditions to which the original order was subject or with varied conditions (as the case requires) or may refuse the application and confirm the order under which he is detained in custody.

S. 18(4)
amended by
Nos 16/1986
s. 30, 51/1989
s. 142(n)(i)(ii),
35/1996
s. 453(Sch. 1
item 8.2),
84/1997
s. 7(1)(a)–(d).

- (4) Where application is made under subsection (1) or (6B) to a court in respect of an order made by a court or bail justice, the first-mentioned court shall not proceed to hear the matter of the application unless the applicant was not represented by a legal practitioner when the order was made or the applicant satisfies the court hearing the application that new facts or circumstances have arisen since the making of the order.
- (5) The foregoing provisions of this section shall not in any way limit or derogate from any right of application or appeal to the Supreme Court or the County Court which any person may have apart from the provisions of this section.
- (6) Where a court has granted bail it may on application—
- (a) by or on behalf of the person to whom it was granted; or

(b) by or on behalf of the informant or the Crown—

vary the amount or conditions of bail or revoke the bail or impose conditions in respect of bail granted unconditionally.

(6A) If a court refuses to revoke bail on an application under subsection (6)(b), the Director of Public Prosecutions, if satisfied that an appeal should be brought in the public interest, may appeal to the Supreme Court in the same manner as is provided in section 18A.

S. 18(6A)
inserted by
No. 57/1989
s. 4(1)(c).

(6B) If a person has been released on bail but the bail is revoked under this section or section 24(3), the person may apply to—

S. 18(6B)
inserted by
No. 84/1997
s. 7(2).

(a) the Magistrates' Court; or

(b) the court to which the person was required to surrender under the conditions of the revoked bail—

for an order granting bail.

(7) Where an accused who has been admitted to bail with a surety or sureties makes application pursuant to this section for an order varying the amount of the bail fixed or any condition of bail imposed he shall at a reasonable time before the hearing of the application give notice in writing of the application in the prescribed form to the surety or sureties (as the case may be) and the surety or sureties (as the case may be) shall be entitled to appear at the hearing of the application and to give evidence and the court or bail justice may, if it or he or she thinks fit, adjourn the hearing to enable him or them to do so.

S. 18(7)
inserted by
No. 9158 s. 4,
amended by
Nos 16/1986
s. 30, 51/1989
s. 142(o),
68/2009
s. 97(Sch.
item 11.1).

(8) A notice required to be given to a surety pursuant to subsection (7) may be given personally or by post or by causing the notice to be delivered at his place of residence shown in the affidavit or

S. 18(8)
inserted by
No. 9158 s. 4.

s. 18A

declaration of justification for bail made by the surety.

S. 18(9)
inserted by
No. 9158 s. 4,
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

- (9) The provisions of subsection (7) shall apply to any application made to the Supreme Court or the County Court for an order varying the amount of any bail fixed or condition of bail imposed which such an accused as is described in that subsection might have the right to make apart from the provisions of this section as it applies to an application made pursuant to this section.

S. 18A
inserted by
No. 9690 s. 4.

18A Appeal by Director of Public Prosecutions against inadequacy of bail etc.

S. 18A(1)
amended by
Nos 9902
s. 2(1)(Sch.
item 2), 10087
s. 3(1)(Sch. 1
item 5),
57/1989
s. 4(1)(d)(i).

- (1) Where a person is granted bail in an amount which appears to the Director of Public Prosecutions to be inadequate or on conditions which appear to the Director of Public Prosecutions to be insufficient or in circumstances appearing to the Director of Public Prosecutions to contravene or fail to comply with any of the provisions of this Act and the Director of Public Prosecutions is satisfied that an appeal should be brought in the public interest the Director of Public Prosecutions on behalf of Her Majesty may appeal to the Supreme Court against the order granting bail to that person.

S. 18A(2)
amended by
Nos 10084
s. 18(2),
57/1989
s. 4(1)(d)(ii).

- (2) Where the Director of Public Prosecutions desires to appeal to the Court under subsection (1) he shall cause notice of appeal setting forth the grounds thereof to be given to the person granted bail (hereafter in this section called the **respondent**) and to each of the sureties (if any).
- (3) A notice required to be given to a surety under subsection (2) may be given personally or by post or by causing the notice to be delivered at the place of residence of the respondent or surety (as the case requires) shown in the affidavit or declaration of justification for bail.

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| (4) Notice of appeal shall not be given under subsection (1) more than one month after the bail is granted without first obtaining the leave of the Supreme Court. | S. 18A(4)
amended by
No. 57/1989
s. 4(1)(d)(iii). |
| (5) The Director of Public Prosecutions or a legal practitioner on his behalf may appear on behalf of Her Majesty on any appeal under this section and any respondent or surety to whom notice is given under subsection (3) may appear by himself or by a legal practitioner on his behalf. | S. 18A(5)
amended by
Nos 10084
s. 18(2),
35/1996
s. 453(Sch. 1
item 8.3). |
| (6) Upon an appeal under this section the Supreme Court shall if it thinks that a different order should have been made set aside the order and, without in any way limiting the powers of the Supreme Court with respect to bail, make any order in substitution therefor as it thinks ought to have been made. | S. 18A(6)
amended by
No. 68/2009
s. 97(Sch.
item 11.18). |
| (7) If the respondent is not present in Court when an order granting bail is revoked or varied under this section the Court shall cause a warrant to be issued for apprehending the respondent and bringing him before the Court. | S. 18A(7)
amended by
No. 57/1989
s. 4(1)(d)(iv). |
| (8) If the Court revokes an order granting the respondent bail the Court shall commit the respondent to prison to await his trial. | S. 18A(8)
amended by
No. 57/1989
s. 4(1)(d)(v). |
| (9) If the Court makes an order varying the amount or conditions of bail the Court shall require the respondent to find further or other surety or securities for the attendance of the respondent and may commit him to prison until further or other surety or security is provided. | S. 18A(9)
amended by
No. 68/2009
s. 97(Sch.
item 11.19). |
| (10) On the hearing and determination of an appeal under this section no costs shall be allowed on either side. | |
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- (11) A respondent if he so desires is entitled to be present on the hearing of an appeal under this section notwithstanding that he may be in custody but the Court may make any order under this section where the respondent is for any reason not present.

No. 8731 s. 35.

19 Arrest on another charge not to vacate bail

S. 19(1)
amended by
No. 68/2009
s. 97(Sch.
items 11.1,
11.20).

- (1) Where an accused is on bail to attend before a court his arrest on another charge shall not vacate the undertaking of bail which shall continue to bind him and his sureties (if any) until he is discharged or sentenced in respect of the offence to which the bail relates.

S. 19(2)
amended by
No. 68/2009
s. 97(Sch.
item 11.21).

- (2) Notwithstanding anything to the contrary in subsection (1) where a person arrested on another charge is on bail to attend before a court the court may commit him to prison or may require him to furnish new or additional sureties for his attendance until he is discharged or sentenced.

S. 19(3)
amended by
No. 68/2009
s. 97(Sch.
items 11.1,
11.22).

- (3) If an accused who is on bail to attend for trial is committed to prison pursuant to the provisions of subsection (2) the sureties (if any) for his attendance are discharged.

No. 8731 s. 36.

20 Death of surety

S. 20
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

Where a surety to bail dies before the bail is forfeited his estate shall not be subject to any liability in respect of the bail but the accused may be required to find another surety.

No. 8731 s. 37.

21 Surety may apprehend principal

S. 21(1)
amended by
Nos 51/1989
s. 142(p),
68/2009
s. 97(Sch.
item 11.23).

- (1) Where a person is bailed to attend on a certain day before a court a surety for the bail may before that day apprehend the principal and bring him before a bail justice or the court to which he is bailed to attend and all members of the police force shall, if required by the surety, assist him in the apprehension.

- (2) The bail justice or court may direct that the liability of the surety be discharged and may call upon the principal to find other surety in the same amount and, if he fails to do so, may commit him to prison.

S. 21(2)
amended by
No. 51/1989
s. 142(q).

22 Principal apprehended may again apply for bail

No. 8731
s. 38.

Where a surety for a person apprehends his principal and that principal is committed to prison pursuant to the provisions of section 21 the principal may apply to the court before which he was required to attend or to a magistrate to be admitted again to bail and the court or magistrate may—

S. 22
amended by
Nos 16/1986
s. 30, 68/2009
s. 97(Sch.
item 11.24).

- (a) refuse the application; or
- (b) allow the application and make any order with respect to the number of sureties (if any) the amount and conditions of bail as it or he considers proper in the circumstances.

23 Surety may apply for discharge

No. 8731 s. 39.

- (1) Any of the sureties for the attendance of an accused released on bail may at any time apply to the court to which the accused would be required to surrender himself under the conditions of the bail to discharge the applicant from his liability with respect to the undertaking.
- (2) On an application being made under subsection (1) the court shall issue a warrant for apprehending the accused and bringing him before the court.
- (3) On the attendance of the accused before the court the court may direct the applicant to be discharged from his liability with respect to the undertaking.

S. 23(1)
amended by
Nos 9158 s. 5,
68/2009
s. 97(Sch.
item 11.25).

S. 23(2)
amended by
No. 68/2009
s. 97(Sch.
item 11.25(c)).

S. 23(3)
amended by
No. 68/2009
s. 97(Sch.
item 11.25
(a)(c)).

S. 23(4)
amended by
No. 68/2009
s. 97(Sch.
item
11.25(a)(c)).

- (4) If the court discharges a surety from his liability with respect to an undertaking of bail the court shall require the accused to find another surety or other security for his attendance and may commit him to prison until a further surety or security is provided.

No. 8731 s. 40.

24 Arrest of person released on bail

- (1) Any member of the police force may without warrant arrest any person who has been released on bail—

S. 24(1)(a)
amended by
No. 68/2009
s. 97(Sch.
item 11.26).

- (a) if the member of the police force has reasonable grounds for believing that the person is likely to break the condition for his attendance or any other condition on which he was admitted to bail, or has reasonable cause to suspect that the person is breaking or has broken any such other condition;

S. 24(1)(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.26).

- (b) if the member of the police force is notified in writing by any surety for the person that the surety believes that the person is likely to break the condition for his attendance and for that reason the surety wishes to be relieved of his obligations as a surety; or

- (c) if the member of the police force has reasonable grounds for believing that any surety is dead, or that for any other reason the security is no longer sufficient.

- (2) A person arrested under subsection (1)—

S. 24(2)(a)
amended by
No. 51/1989
s. 142(r).

- (a) shall be brought before a bail justice as soon as practicable after his arrest and in any event within 24 hours thereafter; or

S. 24(2)(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.27).

- (b) where he is arrested within 24 hours before the time at which he is bound by a condition of his bail to attend before a court—shall be brought before that court at that time.

-
- (3) Where a person is brought before a bail justice or court pursuant to the provisions of paragraph (a) or paragraph (b) of subsection (2) the bail justice or court—
- (a) if of the opinion that the person has broken or is likely to break a condition of the undertaking on which the person was admitted to bail—may revoke the bail and commit the person to prison with a direction to the officer in charge of the prison—
- (i) if the direction is given by a court, that the person be brought before the court at the time when the person is required by the conditions of the bail to attend; or
- (ii) if the direction is given by a bail justice, that the person be brought before the Magistrates' Court on a date, specified in the direction, as soon as practicable but not later than 8 clear days after the direction is given—
- or release the person on his or her original undertaking or on a new undertaking with or without sureties; or
- (b) if not of that opinion—shall release the person on his or her original undertaking.
- (4) If a bail justice or court refuses to revoke bail under subsection (3)(a), the Director of Public Prosecutions, if satisfied that an appeal should be brought in the public interest, may appeal to the Supreme Court in the same manner as is provided in section 18A.
- (5) If the bail of a person is revoked under subsection (3), the person may apply under section 18(6B) for an order granting bail.
- S. 24(3)**
amended by
No. 51/1989
s. 142(s).
- S. 24(3)(a)**
substituted by
No. 84/1997
s. 8(1).
- S. 24(3)(a)(i)**
amended by
No. 68/2009
s. 97(Sch.
item 11.28).
- S. 24(3)(b)**
substituted by
No. 84/1997
s. 8(1).
- S. 24(4)**
inserted by
No. 57/1989
s. 4(1)(e).
- S. 24(5)**
inserted by
No. 84/1997
s. 8(2).

No. 8731 s. 41.

S. 25
amended by
No. 68/2009
s. 97(Sch.
item 11.29).

25 Arrest for imposing additional conditions

Where a court is of opinion that it is necessary or advisable in the interests of justice that the conditions of bail of any person should be amended or supplemented, the court may issue a warrant for the apprehension of the accused and may, when the accused is brought before the court amend or supplement the conditions as the court thinks fit.

No. 8731 s. 42.

26 Arrest where bail insufficient

(1) Where a court by which a person was admitted to bail is of opinion that he was released with insufficient security or with security which has become insufficient the court by which the person was granted bail may issue a warrant for his apprehension directing that he be brought before a court and may order him to find sufficient security and, if he fails to do so, may commit him to prison.

S. 26(2)
amended by
No. 68/2009
s. 97(Sch.
item 11.30).

(2) Where a person charged with or convicted of an offence has entered into an undertaking conditioned for his attendance before a court and, in breach of the undertaking, fails to attend the court may, without prejudice to any right of action arising out of the undertaking, issue a warrant for his apprehension.

No. 8731
s. 148(2).

S. 27
amended by
Nos 51/1989
s. 142(t),
84/1997
s. 9(1)
(2)(ILA
s. 39B(1)).

27 Admission to bail

(1) Where the conditions of an undertaking have been fixed the undertaking need not be entered into before the court granting the bail but may be entered into by the parties before any other court or before a bail justice or a court official or before a member of the police force of or above the rank of sergeant or for the time being in charge of a police station or, where any of the parties is in prison, before the governor of the prison or any

prison officer thereat of or above the rank of senior prison officer and thereupon all the consequences of law shall ensue as if the undertaking had been entered into before the court granting the bail.

(2) In this section, *court official* means—

- (a) in the case of the Supreme Court, the prothonotary or a deputy prothonotary;
- (b) in the case of the County Court, the registrar or a deputy registrar;
- (c) in the case of the Magistrates' Court, a registrar or deputy registrar;
- (d) in the case of an infringement warrant within the meaning of the **Infringements Act 2006**, the sheriff or a person authorised under section 84(5) of that Act.

S. 27(2)
inserted by
No. 84/1997
s. 9(2).

S. 27(2)(d)
inserted by
No. 32/2006
s. 91(4).

28 One undertaking may be entered in respect of number of charges

No. 8731 s. 24.

Where an accused is taken into custody upon charges for two or more offences he may be admitted to bail upon his entering, together with his sureties (if any), into one undertaking for his attendance at a stated time and place upon all the charges.

S. 28
amended by
No. 68/2009
s. 97(Sch.
items 11.1,
11.31).

29 Notice of trial

(1) Where a person committed for trial is on bail to attend at his trial the Director of Public Prosecutions shall, when a time is fixed for the trial, cause notice in writing to be sent by post or by telegram or cablegram—

S. 29(1)
amended by
Nos 9690
s. 5(1), 9848
s. 18(1),
68/2009
s. 97(Sch.
item 11.32(a)).

(a) to the accused; and

S. 29(1)(a)
amended by
No. 68/2009
s. 97(Sch.
item 11.1).

s. 30

S. 29(1)(b)
amended by
No. 68/2009
s. 97(Sch.
items 11.1.
11.32(b)).

(b) to each of the sureties (if any) for the attendance of the accused—

addressed to them at the respective addresses appearing in the undertaking or notified under subsection (2) advising them of the day time and place fixed for the trial.

S. 29(2)
amended by
Nos 9848
s. 18(1),
68/2009
s. 97(Sch.
item 11.33).

(2) A person on bail for attendance at trial and any surety for the attendance of a person at his trial shall, if he changes his place of residence or business from the place appearing in the undertaking as his address, forthwith notify the Director of Public Prosecutions in writing of the change of address.

S. 29(3)
substituted by
No. 9848
s. 18(1).

(3) For the purposes of subsection (2) the address of the Director of Public Prosecutions is the address for the time being prescribed for the purposes of this section.

S. 29(4)
amended by
No. 9554
s. 2(2)(Sch. 2
item 18).

(4) Any person who fails to comply with the provisions of subsection (2) shall be guilty of an offence against this Act.

Penalty: 15 penalty units or imprisonment for three months.

30 Failure to answer bail

S. 30(1)
amended by
No. 68/2009
s. 97(Sch.
item 11.34).

(1) Any person released on bail who fails without reasonable cause, the proof whereof lies upon him, to attend in accordance with his undertaking of bail and surrender himself into custody shall be guilty of an offence against this Act.

Penalty: Imprisonment for twelve months.

(2) In any proceedings against a person for an offence against this section—

(a) a document purporting to be or to be a copy of an undertaking of bail entered into by the accused and to be certified by an officer of the court having the custody of the document to be the undertaking or a copy of the undertaking with which it is alleged in the proceedings that the accused has failed to comply shall be prima facie evidence of the entry of the accused into the undertaking and of the conditions of the undertaking; and

S. 30(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 11.35(a)).

(b) a document purporting to be or to be a copy of a declaration of forfeiture made by a court of an undertaking of bail entered into by the accused and certified by an officer of the court having the custody of the document to relate to the undertaking of bail with which it is alleged in the proceedings that the accused has failed to comply shall be prima facie evidence of the failure of the accused to attend in answer to his bail and surrender himself into custody.

S. 30(2)(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.35).

(3) In any proceedings against a person for failing to answer bail for attendance at a trial a certificate purporting to be signed by the Director of Public Prosecutions as to the sending by post or by telegram or cablegram of notice of the time and place fixed for the conduct of the trial shall be prima facie evidence of the service of the notice.

S. 30(3)
amended by
Nos 9690
s. 5(2), 9848
s. 18(1),
68/2009
s. 97(Sch.
item 11.36).

31 Indemnifying surety

(1) Any person who indemnifies another person or who agrees with another person to indemnify that other person against any liability which that other person may incur as a surety to secure the attendance in answer to bail and the surrender to custody of a person accused or convicted of or

S. 31(1)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 18),
68/2009
s. 97(Sch.
item 11.37).

under arrest for an offence he and that other person shall be guilty of an offence.

Penalty: 15 penalty units or imprisonment for three months.

- (2) An offence is committed against subsection (1) whether the agreement is made before or after the person to be indemnified becomes a surety and whether or not he becomes a surety and whether the agreement contemplates compensation in money or money's worth.

S. 32
(Heading)
inserted by
No. 68/2009
s. 97(Sch.
item 11.38).
S. 32
amended by
68/2009
s. 97(Sch.
item 11.39).

32 Deposit forfeited on failure to attend

Where a deposit of money or other security is made as a condition of bail declared to be forfeited because of the failure of the person released to attend in accordance with his undertaking the deposit becomes forfeited to Her Majesty but the person bailed shall have the same right as a surety has under section 6 of the **Crown Proceedings Act 1958** to apply for an order varying or rescinding the forfeiture and for that purpose the provisions of the said section 6 shall, so far as those provisions are applicable and with such modifications as are necessary, apply with respect to forfeited deposits of bail and in particular with the modification that any reference in those provisions to a surety shall be read and construed as a reference to the person bailed.

33 Regulations

The Governor in Council may make regulations for or with respect to—

- (a) forms for the purposes of this Act and the particulars required to be given thereon;
- (b) the procedures to be followed in granting bail and admitting an accused to bail and upon applications or other proceedings under this Act;

S. 33(b)
amended by
No. 68/2009
s. 97(Sch.
item 11.40).

- (c) the information to be given to an accused and sureties of any of the requirements of this Act and the giving of such information; and
- (d) generally any matter or thing which is required or authorized to be prescribed for carrying this Act into effect.

S. 33(c) amended by No. 68/2009 s. 97(Sch. item 11.40).

34 Transitional provisions

- (1) The amendment of section 4(2)(aa) made by section 48 of the **Sentencing and other Acts (Amendment) Act 1997** applies only with respect to a charge for an offence filed after the commencement of that section of that Act.
- (2) This Act as amended by Part 2 of the **Law and Justice Legislation (Further Amendment) Act 1997** applies only with respect to a charge for an offence filed on or after 1 January 1998.
- (3) The amendment of section 4(2)(aa) made by section 5 of the **Bail (Amendment) Act 1998** applies only with respect to a charge for an offence filed on or after 1 January 1999.
- (4) The amendments of section 4 made by the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** apply only with respect to a charge for an offence filed on or after the commencement of that Act.
- (5) The amendment of section 4(4) made by section 10 of the **Crimes (Property Damage and Computer Offences) Act 2003** applies only with respect to a charge for an offence filed on or after the commencement of that Act.

S. 34 inserted by No. 48/1997 s. 49, amended by No. 84/1997 s. 10 (ILA s. 39B(1)).

S. 34(2) inserted by No. 84/1997 s. 10.

S. 34(3) inserted by No. 64/1998 s. 6.

S. 34(4) inserted by No. 61/2001 s. 13(3).

S. 34(5) inserted by No. 10/2003 s. 11.

Bail Act 1977
No. 9008 of 1977

Sch.

Sch.
amended by
No. 9059
s. 2(1)(Sch.
items 1-5),
repealed by
No. 9863 s. 2.

* * * * *

ENDNOTES

1. General Information

The **Bail Act 1977** was assented to on 10 May 1977 and came into operation on 1 September 1977: Government Gazette 17 August 1977 page 2654.

2. Table of Amendments

This Version incorporates amendments made to the **Bail Act 1977** by Acts and subordinate instruments.

Statute Law Revision Act 1977, No. 9059/1977

Assent Date: 29.11.77
Commencement Date: 29.11.77: subject to s. 2
Current State: All of Act in operation

Age of Majority Act 1977, No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Bail (Amendment) Act 1978, No. 9158/1978

Assent Date: 30.5.78
Commencement Date: 1.10.78: Government Gazette 6.9.78 p. 2869
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80: subject to s. 6(2)
Current State: All of Act in operation

Penalties and Sentences Act 1981, No. 9554/1981

Assent Date: 19.5.81
Commencement Date: S. 44 on 26.9.80: s. 1(3); ss 1, 36–46 on 3.6.81: Government Gazette 3.6.81 p. 1778; rest of Act on 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Bail (Amendment) Act 1981, No. 9690/1981

Assent Date: 5.1.82
Commencement Date: 5.1.82
Current State: All of Act in operation

Director of Public Prosecutions Act 1982, No. 9848/1982

Assent Date: 21.12.82
Commencement Date: Ss 1–8, 17 on 12.1.83: Government Gazette 12.1.83 p. 80; rest of Act on 1.6.83: Government Gazette 11.5.83 p. 1146
Current State: All of Act in operation

Statute Law Revision (Repeals) Act 1982, No. 9863/1982

Assent Date: 5.1.83
Commencement Date: 5.1.83
Current State: All of Act in operation

Statute Law Revision Act 1983, No. 9902/1983

Assent Date: 15.6.83
Commencement Date: 15.6.83: subject to s. 2(2)
Current State: All of Act in operation

**Drugs, Poisons and Controlled Substances (Amendment) Act 1983,
No. 10002/1983**

Assent Date: 13.12.83
Commencement Date: 18.12.83: Government Gazette 14.12.83 p. 3954
Current State: All of Act in operation

Crimes (General Amendment) Act 1984, No. 10084/1984

Assent Date: 22.5.84
Commencement Date: 1.7.84: Government Gazette 27.6.84 p. 2119
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

Coroners Act 1985, No. 10257/1985

Assent Date: 10.12.85
Commencement Date: Ss 1–3, Pt 9 on 12.2.86: Government Gazette 12.2.86
p. 382; rest of Act on 1.6.86: Government Gazette
30.4.86 p. 1115
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: Ss 1–11, 13–27, 29–34 on 1.7.86: Government
Gazette 25.6.86 p. 2180; s. 28 on 1.9.86: Government
Gazette 27.8.86 p. 3201; s. 12 on 1.1.88: Government
Gazette 7.10.87 p. 2701
Current State: All of Act in operation

Bail (Amendment) Act 1986, No. 89/1986

Assent Date: 16.2.86
Commencement Date: Pts 1, 2 on 15.2.87: Government Gazette 11.2.87
p. 291; Pt 3 on 3.8.87: Government Gazette 24.6.87
p. 1600
Current State: All of Act in operation

Community Services Act 1987, No. 16/1987

Assent Date: 12.5.87
Commencement Date: Ss 1–6, 9–13, Sch. 1 on 22.2.89: Government Gazette
22.2.89 p. 386; Sch. 2 items 1–13 on 15.3.89:
Government Gazette 15.3.89 p. 587; rest of Act on
25.6.92: Government Gazette 24.6.92 p. 1532
Current State: All of Act in operation

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 16.5.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Magistrates' Court Act 1989, No. 51/1989

Assent Date: 14.6.89
Commencement Date: S. 16(4) on 15.6.89: Special Gazette (No. 32) 15.6.89 p. 1; ss 16(5), 52, 141(3)(a)–(f) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.1.90: Government Gazette 25.7.90 p. 2216
Current State: All of Act in operation

Children and Young Persons Act 1989, No. 56/1989

Assent Date: 14.6.89
Commencement Date: S. 286 on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2; Sch. 2 item 2.1 on 23.9.91: Government Gazette 28.8.91 p. 2368; Sch. 2 items 2.2 and 2.3 on 30.9.92: Government Gazette 26.8.92 p. 2470
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94; rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Crimes (Amendment) Act 1994, No. 95/1994

Assent Date: 13.12.94
Commencement Date: Pt 1 (ss 1, 2) on 13.12.94; ss 3–10 on 23.1.95: Government Gazette 19.1.95 p. 121; rest of Act on 13.6.95: s. 2(3)
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 8.1–8.3) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997

Assent Date: 11.6.97
Commencement Date: Ss 48, 49 on 1.9.97: s. 2(2)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Law and Justice Legislation (Further Amendment) Act 1997, No. 84/1997

Assent Date: 2.12.97
Commencement Date: Ss 3–10 on 1.1.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Bail (Amendment) Act 1998, No. 64/1998

Assent Date: 4.11.98
Commencement Date: 1.1.99: s. 2
Current State: All of Act in operation

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 5) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Drugs, Poisons and Controlled Substances (Amendment) Act 2001, No. 61/2001

Assent Date: 23.10.01
Commencement Date: S. 13 on 1.1.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Criminal Justice Legislation (Miscellaneous Amendments) Act 2002, No. 35/2002

Assent Date: 18.6.02
Commencement Date: Ss 25(1), 28(Sch. item 1) on 19.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Crimes (Property Damage and Computer Offences) Act 2003, No. 10/2003

Assent Date: 6.5.03
Commencement Date: Ss 10, 11 on 7.5.03: s. 2
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Justice Legislation (Sexual Offences and Bail) Act 2004, No. 20/2004

Assent Date: 18.5.04
Commencement Date: Ss 10–12 on 19.5.04: s. 2
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 9) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Children and Young Persons (Miscellaneous Amendments) 2005, No. 21/2005

Assent Date: 31.5.05
Commencement Date: S. 60 on 1.7.05: s. 2(6)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005

Assent Date: 29.11.05
Commencement Date: S. 13 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 4) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 91 on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 4) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Family Violence Protection Act 2008, No. 52/2008

Assent Date: 23.9.08
Commencement Date: S. 233 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Stalking Intervention Orders Act 2008, No. 68/2008

Assent Date: 18.11.08
Commencement Date: S. 63 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 11) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Bail Act 1977**

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Endnotes

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,
No. 69/2009**

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt. 1 item 4), (Sch. Pt 2 item 6) on 1.1.10:
s. 2(2)
Current State: This information relates only to the provision/s
amending the **Bail Act 1977**

3. Explanatory Details

¹ S. 4(2)(d)(ii): The amendment proposed by section 286(Sch. 2 item 2.2) of the **Children and Young Persons Act 1989**, No. 56/1989 is not included in this publication because the above subparagraph was repealed by the **Community Services Act 1987**, No. 16/1987.

² S. 5(3): The amendments proposed by section 286(Sch. 2 item 2.3) of the **Children and Young Persons Act 1989**, No. 56/1989 are not included in this publication because the above subsection was repealed by the **Community Services Act 1987**, No. 16/1987.