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BAIL ACT, 1997

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SCHEDULE

[No. 16.]

Bail Act, 1997.

[1997.]

Acts Referred to

Air Navigation and Transport Act, 1973	1973, No. 29
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Criminal Damage Act, 1991	1991, No. 31
Criminal Justice (Public Order) Act, 1994	1994, No. 2
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Criminal Law Amendment Act, 1935	1935, No. 6
Criminal Law (Jurisdiction) Act, 1976	1976, No. 14
Criminal Law (Rape) (Amendment) Act, 1990	1990, No. 32
Criminal Law (Sexual Offences) Act, 1993	1993, No. 20
Criminal Procedure Act, 1967	1967, No. 12
Defence Act, 1954	1954, No. 18
Explosive Substances Act, 1883	46 & 47 Vict. c. 3
Firearms Act, 1925	1925, No. 17
Firearms Act, 1964	1964, No. 1
Firearms and Offensive Weapons Act, 1990	1990, No. 12
Forgery Act, 1861	1861, c. 98
Forgery Act, 1913	1913, c. 27
Larceny Acts, 1916 to 1990	
Misuse of Drugs Act, 1977	1977, No. 12
Offences against the Person Act, 1861	1861, c. 100
Offences against the State Act, 1939	1939, No. 13
Punishment of Incest Act, 1908	1908, c. 45
Road Traffic Act, 1961	1961, No. 24



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BAIL ACT, 1997

AN ACT TO MAKE FURTHER PROVISION IN RELATION TO BAIL, TO AMEND THE CRIMINAL PROCEDURE ACT, 1967, AND TO PROVIDE FOR RELATED MATTERS. [5th May, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, except when the context otherwise requires— Interpretation.

“the Act of 1967” means the Criminal Procedure Act, 1967;

“court” means any court exercising criminal jurisdiction but does not include court martial;

“criminal record”, in relation to a person, means a record of the previous convictions of the person for offences (if any);

“serious offence” means an offence specified in the *Schedule* for which a person of full capacity and not previously convicted may be punished by a term of imprisonment for a term of 5 years or by a more severe penalty.

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

2.—(1) Where an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person. Refusal of bail.

S.2

(2) In exercising its jurisdiction under *subsection (1)*, a court shall take into account and may, where necessary, receive evidence or submissions concerning—

- (a) the nature and degree of seriousness of the offence with which the accused person is charged and the sentence likely to be imposed on conviction,
- (b) the nature and degree of seriousness of the offence apprehended and the sentence likely to be imposed on conviction,
- (c) the nature and strength of the evidence in support of the charge,
- (d) any conviction of the accused person for an offence committed while he or she was on bail,
- (e) any previous convictions of the accused person including any conviction the subject of an appeal (which has neither been determined nor withdrawn) to a court,
- (f) any other offence in respect of which the accused person is charged and is awaiting trial,

and, where it has taken account of one or more of the foregoing, it may also take into account the fact that the accused person is addicted to a controlled drug within the meaning of the Misuse of Drugs Act, 1977.

(3) In determining whether the refusal of an application for bail is reasonably considered necessary to prevent the commission of a serious offence by a person, it shall not be necessary for a court to be satisfied that the commission of a specific offence by that person is apprehended.

Renewal of bail application.

3.—(1) Where an application by a person for bail—

- (a) has been refused by a court under *section 2*, and
- (b) the trial of the person for the offence concerned has not commenced within 4 months from the date of such refusal,

then, the person may renew his or her application for bail to that court on the ground of delay by the prosecutor in proceeding with his or her trial, and the court shall, if satisfied that the interests of justice so require, release the person on bail.

(2) In determining whether to grant or refuse an application under *subsection (1)*, a court may receive evidence or submissions concerning the delay in proceeding with the trial of the person concerned.

(3) Nothing in this section shall affect the operation of section 24 of the Act of 1967.

Evidence of previous criminal record.

4.—(1) In any proceedings in relation to an application referred to in *section 2 (1)*, the previous criminal record of the person applying for bail shall not be referred to in a manner which may prejudice his or her right to a fair trial.

(2) In any such proceedings as aforesaid, a court may—

- (a) direct that the proceedings shall be heard otherwise than in public, or
- (b) exclude from the court during the hearing all persons except officers of the court, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons if any as the court may permit to remain.

(3) In any report of any such proceedings as aforesaid, no information relating to the criminal record of the person applying for bail shall be published in a written publication available to the public or be broadcast.

(4) If any matter is published or broadcast in contravention of *subsection (3)*, the following persons, namely—

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
- (b) in the case of any other publication, the person who publishes it, and
- (c) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,

shall be guilty of an offence and shall be liable—

- (i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or
- (ii) on conviction on indictment, to a fine not exceeding £10,000 or to imprisonment for a term not exceeding 3 years or to both.

(5) In this section—

“a broadcast” means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

“written publication” includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

(6) Where an offence under this section has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

S.4

(7) Where the affairs of a body corporate are managed by its members, *subsection (6)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Payment of moneys into court, etc.

5.—(1) Where a court admits a person who is in custody to bail the person shall not be released until—

- (a) an amount equal to one third, or
- (b) such greater amount as the court may determine,

of any recognisance entered into by a person in connection therewith has been paid into court by the person.

(2) (a) Where a court admits a person to bail, the court may, in lieu of the payment of moneys into court by the person or, where a surety or sureties are required by the court, by his or her surety or sureties, accept as security such instrument which is evidence of the title of a person to property (other than land or any estate, right or interest in or over land) as it considers adequate.

(b) Where a bank, building society, credit union or post office deposit book is accepted as security by a court by virtue of *paragraph (a)*, the court shall make an order directing the bank, building society or credit union concerned or An Post, as the case may be, not to permit the moneys on deposit to be reduced below—

- (i) an amount equal to the amount required to be paid into court, or
 - (ii) the amount then on deposit,
- whichever is the lesser.

(3) Where a person charged with an offence is admitted to bail by a court and—

- (a) he or she is discharged in relation to that offence pursuant to section 8 (5) of the Act of 1967 or otherwise,
- (b) a *nolle prosequi* is entered by the prosecutor in respect of the offence, or
- (c) he or she is convicted or found not guilty of the offence charged or of some other offence of which the accused might on that charge be found guilty,

and if the conditions of any recognisance entered into by a person in connection therewith have been duly complied with, the court before which the accused person was bound by his or her recognisance to appear shall make an order that the amount of any recognisance paid into court by any person in connection therewith shall be repaid to the person and shall discharge any order made under *subsection (2)* and release any security accepted by the court under that subsection.

Conditions of bail.

6.—(1) Where an accused person is admitted to bail on his or her entering into a recognisance—

- (a) the recognisance shall, in addition to the condition requiring his or her appearance before the court at the end of the period of the remand of the accused person, be subject to the following conditions—
- (i) that the accused person shall not commit any offence, and
 - (ii) that the accused person shall otherwise be of good behaviour,
- and
- (b) the recognisance may be subject to such conditions as the court considers appropriate having regard to the circumstances of the case, including but without prejudice to the generality of the foregoing, any one or more of the following conditions:
- (i) that the accused person resides or remains in a particular district or place in the State,
 - (ii) that the accused person reports to a specified Garda Síochána Station at specified intervals,
 - (iii) that the accused person surrenders any passport or travel document in his or her possession or, if he or she is not in possession of a passport or travel document, that he or she refrains from applying for a passport or travel document,
 - (iv) that the accused person refrains from attending at such premises or other place as the court may specify,
 - (v) that the accused person refrains from having any contact with such person or persons as the court may specify.

(2) Where an accused person is admitted to bail by a court on his or her entering into a recognisance with or without a surety or sureties, the court shall direct that a copy of the recognisance containing the conditions of the recognisance be given to the accused person and to the surety or sureties (if any).

(3) Where an accused person is admitted to bail by a court on his or her entering into a recognisance subject to one or more of the conditions referred to in *subsection (1)(b)*, that court may, on the application to it in that behalf at any time by the accused person, if it considers it appropriate to do so, vary (whether by the alteration, addition or revocation of a condition) a condition.

(4) The prosecutor shall be given notice of, and be entitled to be heard in, any proceedings under *subsection (3)*.

(5) Where a person charged with an offence is admitted to bail by a court on his or her entering into a recognisance with or without a surety or sureties, the court may, on the application to it in that behalf by a surety or sureties of the accused person or of a member of the Garda Síochána and upon information being made in writing and on oath by or on behalf of such surety or member that the accused is about to contravene any of the conditions of the recognisance, issue a warrant for the arrest of the accused person.

S.6

(6) A member of the Garda Síochána may arrest a person pursuant to *subsection (5)* notwithstanding that he or she does not have the warrant concerned in his or her possession at the time of the arrest.

(7) Where a person is arrested pursuant to *subsection (6)*, the member arresting him or her shall, as soon as practicable produce and serve on the person the warrant concerned.

(8) A person arrested pursuant to *subsection (6)*, shall, as soon as practicable, be brought before the court that made the order directing that the recognisance be entered into.

(9) Where a person is brought before a court pursuant to *subsection (8)*, the court may commit the person to prison to await his or her trial or until he or she enters a fresh recognisance or, if he or she is on remand, further remand him or her.

Sufficiency of bailpersons.

7.—(1) A court shall in every case satisfy itself as to the sufficiency and suitability of any person proposed to be accepted as a surety for the purpose of bail.

(2) In determining the sufficiency and suitability of a person proposed to be accepted as a surety, a court shall have regard to and may, where necessary, receive evidence or submissions concerning:

- (a) the financial resources of the person,
- (b) the character and antecedents of the person,
- (c) any previous convictions of the person, and
- (d) the relationship of the person to the accused person.

Endorsement on warrants as to release on bail.

8.—(1) Where a court issues a warrant for the arrest of a person, the court may direct that the person named in the warrant be on arrest released on his or her entering into a recognisance, with or without a surety or sureties, conditioned for his or her appearance before a court on such date and at such time and place as may be specified in the endorsement, and the endorsement shall fix the amounts in which the person and his or her surety or sureties (if any) are to be bound and shall specify any other conditions of the recognisance.

(2) Where such an endorsement is made, the member of the Garda Síochána in charge of the Garda Síochána Station to which on arrest the person named in the warrant is brought shall discharge him or her upon his or her entering into a recognisance, with or without surety or sureties, approved by that member and upon the payment of—

- (a) an amount equal to one third, or
- (b) such greater amount as the court may determine,

of any recognisance entered into by a person.

(3) Any moneys paid to a member of the Garda Síochána under *subsection (2)* shall be deposited by him or her with the district court clerk for the district court area in which the Garda Síochána Station is situate.

(4) This section shall not apply to a person arrested under section 251 of the Defence Act, 1954, on suspicion of his or her being a deserter or an absentee without leave from the Defence Forces. S.8

9.—(1) Where an accused person who is admitted to bail on his or her entering into a recognisance with or without a surety or sureties conditioned for his or her appearance before a specified court on a specified date and at a specified time and place fails to appear in accordance with his or her recognisance and the court issues a warrant for the arrest of the person, the court shall order the recognisance of the accused person and the recognisance of any surety or sureties to be estreated and shall order the forfeiture of the amount paid into court by the accused person and any surety or sureties. Estreatment of recognisance and forfeiture of moneys paid into court.

(2) Where an accused person is admitted to bail by a court on his or her entering into a recognisance with or without a surety or sureties, the court may, on the application of a member of the Garda Síochána and upon information being made in writing and on oath by or on behalf of such member that the accused person has contravened a condition (other than the condition referred to in *subsection (1)*) of the recognisance, issue a warrant for the arrest of the accused person.

(3) A member of the Garda Síochána may arrest a person pursuant to *subsection (2)* notwithstanding that he or she does not have the warrant concerned in his or her possession at the time of arrest.

(4) Where a person is arrested pursuant to *subsection (3)*, the member arresting him or her shall, as soon as practicable, produce and serve on the person the warrant concerned.

(5) Where a warrant has been issued under *subsection (2)*, the accused and any surety or sureties shall remain bound by their recognisances and any money paid into court in connection therewith shall not be released before the conclusion of any proceedings under this section.

(6) A person arrested pursuant to this section shall, as soon as practicable, be brought before the court that made the order directing that the recognisance be entered into.

(7) Where a person is brought before a court pursuant to *subsection (6)* and the court is satisfied that the person has contravened a condition of his or her recognisance, the court shall order the recognisance of the person and of any surety or sureties to be estreated and the moneys paid into court by the accused person and any surety or sureties or any part thereof to be forfeited.

(8) Where a court makes an order under *subsection (1)* or *(7)*, notice shall be given to the accused person and to any surety or sureties concerned stating that an application may be made to the court within 21 days from the date of the making of the order to vary or discharge the order.

(9) Where an application is made by a person under *subsection (8)*, the person may make representations in relation to the order and having regard to any such representations, the court may, if satisfied that the interests of justice so require, vary or discharge the order.

Amendment of
Criminal Justice
Act, 1984.

10.—Section 11 of the Criminal Justice Act, 1984, is hereby amended by the insertion of the following subsection after subsection (3):

“(4) Where a court—

(a) is determining the sentence to be imposed on a person for an offence committed while he or she was on bail,

and

(b) is required by subsection (1) to impose two or more consecutive sentences,

then, the fact that the offence was committed while the person was on bail shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the sentence for the previous offence is one of imprisonment for life or where the court considers that there are exceptional circumstances justifying its not doing so) impose a sentence that is greater than that which would have been imposed in the absence of such a factor.”.

Amendment of Act
of 1967.

11.—The Act of 1967 is hereby amended—

(a) in section 26, by the deletion of “or peace commissioner”,

(b) in section 28—

(i) by the deletion in subsection (1) of “or a peace commissioner”, and

(ii) by the deletion in subsection (4) of “or a peace commissioner”, and

(c) in section 33, by the deletion in subsection (1) of “or a peace commissioner”.

Repeals.

12.—Sections 27, 30 and 33 of the Act of 1967 are hereby repealed.

Short title and
commencement.

13.—(1) This Act may be cited as the Bail Act, 1997.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister for Justice under this section, may be fixed therefor, either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

Section 1.

SCHEDULE

Common law offences

1. Murder.
2. Manslaughter.
3. Assault occasioning actual bodily harm.

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4. Kidnapping.

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5. False imprisonment.

6. Rape.

Offences against the person

7. Any offence under the following provisions of the Offences against the Person Act, 1861—

(a) section 18 (wounding with intent to do grievous bodily harm);

(b) section 20 (causing grievous bodily harm).

8. Any offence under the following provisions of the Criminal Justice (Public Order) Act, 1994—

(a) section 18 (assault with intent to cause bodily harm or commit indictable offence);

(b) section 19 (assault or obstruction of peace officer).

Sexual offences

9. Any offence under section 1 (incest by males) and section 2 (incest by female of or over 17 years) of the Punishment of Incest Act, 1908.

10. Any offence under section 1 (defilement of girl under fifteen years of age) and section 2 (defilement of girl between fifteen and seventeen years of age) of the Criminal Law Amendment Act, 1935.

11. Any offence under the following provisions of the Criminal Law (Rape) (Amendment) Act, 1990—

(a) section 2 (sexual assault);

(b) section 3 (aggravated sexual assault);

(c) section 4 (rape under section 4).

12. Any offence under the following provisions of the Criminal Law (Sexual Offences) Act, 1993—

(a) section 3 (buggery of persons under 17 years of age);

(b) section 5 (protection of mentally impaired persons);

(c) sections 9 and 11 (organisation etc. of prostitution).

Explosives

13. Any offence under the following provisions of the Explosive Substances Act, 1883—

(a) section 2 (causing explosion likely to endanger life or damage property);

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- (b) section 3 (possession etc. of explosive substances);
- (c) section 4 (making or possessing explosives in suspicious circumstances).

Firearms

14. Any offence under section 15 of the Firearms Act, 1925 (possessing firearm or ammunition with intent to endanger life or cause serious injury to property).

15. Any offence under the following provisions of the Firearms Act, 1964—

- (a) section 26 (possession of firearm while taking vehicle without authority);
- (b) section 27 (use of firearm to resist arrest or aid escape);
- (c) section 27A (possession of firearm or ammunition in suspicious circumstances);
- (d) section 27B (carrying firearm with criminal intent).

16. Any offence under the following provisions of the Firearms and Offensive Weapons Act, 1990—

- (a) section 8 (reckless discharge of firearm);
- (b) section 9 (possession of knives and other articles);
- (c) section 10 (trespassing with a knife, weapon of offence or other article);
- (d) section 11 (production of article capable of inflicting serious injury).

Robbery and burglary

17. Any offence under the provisions of the Larceny Acts, 1916 to 1990.

18. Any offence under the following provisions of the Criminal Damage Act, 1991—

- (a) section 2 (damaging property);
- (b) section 3 (threat to damage property);
- (c) section 4 (possessing any thing with intent to damage property).

Road Traffic Act offences

19. Any offence under the following provisions of the Road Traffic Act, 1961—

- (a) section 53 (dangerous driving causing death or serious bodily harm);
- (b) section 112 (taking vehicle without authority).

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Offences in relation to aircraft and vehicles

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20. Any offence under section 11 of the Air Navigation and Transport Act, 1973 (unlawful seizure of aircraft).

21. Any offence under section 3 of the Air Navigation and Transport Act, 1975 (unlawful acts against the safety of aviation).

22. Any offence under section 10 of the Criminal Law (Jurisdiction) Act, 1976 (unlawful seizure of vehicles).

Forgery etc. offences

23. Any offence under section 3 (personating the owner of certain stock and transferring or receiving or endeavouring to transfer or receive stock or dividends) of the Forgery Act, 1861.

24. Any offence under the following provisions of the Forgery Act, 1913—

(a) section 2 (forgery of certain documents with intent to defraud);

(b) section 3 (forgery of certain documents with intent to defraud or deceive);

(c) section 5 (forgery of seals and dies);

(d) section 7 (demanding property on forged documents);

(e) section 8 (possession of forged documents, seals and dies);

(f) section 9 (making or having in possession paper or implements for forgery).

Offences against the State

25. Any offence under the provisions of the Offences against the State Act, 1939.

26. Treason.

Drugs offences

27. A drug trafficking offence within the meaning of section 3 (1) of the Criminal Justice Act, 1994.

Public order offences

28. Any offence under the following provisions of the Criminal Justice (Public Order) Act, 1994—

(a) section 14 (riot);

(b) section 15 (violent disorder);

(c) section 16 (affray).

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Accomplices

29. References in this *Schedule* to an offence include references to participation as an accomplice of a person who commits the offence.

Attempts and conspiracy

30. An offence of attempting or conspiring to commit any offence mentioned in a preceding paragraph of this *Schedule*.