

SCHEDULES

SCHEDULE 11

Section 90

AMENDMENT OF ENACTMENTS RELATING TO BAIL

Bail Act 1976 (c. 63)

- 1 The Bail Act 1976 is amended as follows.
- 2 In section 2(2) (definitions)—
 - (a) insert the following definitions at the appropriate places—
 - ““bail in non-extradition proceedings” means bail in criminal proceedings of the kind mentioned in section 1(1)(a),”;
 - ““custodial sentence” means a sentence or order mentioned in section 76(1) of the Powers of Criminal Courts (Sentencing) Act 2000 or any corresponding sentence or order imposed or made under any earlier enactment,”;
 - ““imprisonable offence” means an offence punishable in the case of an adult with imprisonment,”;
 - ““sexual offence” means an offence specified in Part 2 of Schedule 15 to the Criminal Justice Act 2003,”;
 - ““violent offence” means murder or an offence specified in Part 1 of Schedule 15 to the Criminal Justice Act 2003,” and
 - (b) in the definition of “young person” for “seventeen” substitute “eighteen”.
- 3 (1) Section 3 (general provisions) is amended as follows.
 - (2) In subsection (6ZAA), for “person,” substitute “person granted bail in criminal proceedings of the kind mentioned in section 1(1)(a) or (b)), section 3AAA (in the case of a child or young person granted bail in connection with extradition proceedings),”.
 - (3) In subsection (7)—
 - (a) for “a child or young person” substitute “a person under the age of seventeen”;
 - (b) for the words “the child or young person”, in both places they appear, substitute “the person”, and
 - (c) in paragraph (a)—
 - (i) omit “of a young person”, and
 - (ii) omit “young” in the second place it appears.
- 4 (1) Section 3AA (conditions for the imposition of electronic monitoring requirements: children and young persons) is amended as follows.
 - (2) In the heading after “young persons” insert “released on bail other than in extradition proceedings”.

- (3) In subsection (1) (conditions for the imposition of electronic monitoring conditions: children and young persons) after “young person” insert “released on bail in criminal proceedings of the kind mentioned in section 1(1)(a) or (b)”.
- 5 After section 3AA insert—

“3AAA Conditions for the imposition of electronic monitoring requirements: children and young persons released on bail in extradition proceedings

- (1) A court may not impose electronic monitoring requirements on a child or young person released on bail in connection with extradition proceedings unless each of the following conditions is met.
- (2) The first condition is that the child or young person has attained the age of twelve years.
- (3) The second condition is that—
- (a) the conduct constituting the offence to which the extradition proceedings relate, or one or more of those offences, would, if committed in England and Wales, constitute a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more, or
 - (b) the offence or offences to which the extradition proceedings relate, together with any other imprisonable offences of which the child or young person has been convicted in any proceedings—
 - (i) amount, or
 - (ii) would, if the child or young person were convicted of that offence or those offences, amount,

to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.
- (4) The third condition is that the court is satisfied that the necessary provision for dealing with the child or young person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area.
- (5) The fourth condition is that a youth offending team has informed the court that in its opinion the imposition of electronic monitoring requirements will be suitable in the case of the child or young person.
- (6) The references in subsection (3)(b) to an imprisonable offence include a reference to an offence—
- (a) of which the child or young person has been accused or convicted outside England and Wales, and
 - (b) which is equivalent to an offence that is punishable with imprisonment in England and Wales.
- (7) The reference in subsection (3)(b) to a child or young person being subject to a custodial remand is to the child or young person being—
- (a) remanded to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,

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- (b) remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969 or to prison under that section as modified by section 98 of the Crime and Disorder Act 1998 or under section 27 of the Criminal Justice Act 1948, or
 - (c) subject to a form of custodial detention in a country or territory outside England and Wales while awaiting trial or sentence in that country or territory or during a trial in that country or territory.”
- 6 (1) Section 3AB (conditions for the imposition of electronic monitoring requirements: other persons) is amended as follows.
 - (2) In subsection (1) for “seventeen” substitute “eighteen”.
 - (3) Omit subsection (4).
- 7 In section 3AC (electronic monitoring: general provisions) in each of subsections (7) and (8) after “3AA” insert “, 3AAA”.
- 8 (1) Section 7 (liability to arrest for absconding or breaking conditions of bail) is amended as follows.
 - (2) In subsection (5) for “subsection (6)” substitute “subsections (5A) and (6)”.
 - (3) After subsection (5) insert—
 - “(5A) A justice of the peace may not remand a person in, or commit a person to, custody under subsection (5) if—
 - (a) the person has attained the age of eighteen,
 - (b) the person was released on bail in non-extradition proceedings,
 - (c) the person has not been convicted of an offence in those proceedings, and
 - (d) it appears to the justice of the peace that there is no real prospect that the person will be sentenced to a custodial sentence in the proceedings.”
 - (4) In subsection (6) for “the person so brought before the justice” substitute “a person brought before a justice under subsection (4) or (4B)”.
- 9 (1) Section 9A (bail decisions relating to persons aged under 18 who are accused of offences mentioned in Schedule 2 to the Magistrates’ Courts Act 1980) is amended as follows.
 - (2) In the heading for “persons aged under 18” substitute “children or young persons”.
 - (3) In subsection (1)(a) for “person aged under 18” substitute “child or young person”.
 - (4) In subsections (2) and (3)(b) after “accused” insert “child or young”.
- 10 Part 1 of Schedule 1 (bail for defendants accused or convicted of certain imprisonable offences) is amended in accordance with paragraphs 11 to 21.
- 11 For the heading immediately before paragraph 1 (defendants to whom Part 1 applies) substitute “Application of Part 1”.
- 12 In paragraph 1 (defendants to whom Part 1 applies) in sub-paragraph (1) after “sub-paragraph (2)” insert “and paragraph 1A”.
- 13 After paragraph 1 insert—

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- “1A (1) The paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in non-extradition proceedings where—
- (a) the defendant has attained the age of 18,
 - (b) the defendant has not been convicted of an offence in those proceedings, and
 - (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.
- (2) The paragraphs are—
- (a) paragraph 2 (refusal of bail where defendant may fail to surrender to custody, commit offences on bail or interfere with witnesses),
 - (b) paragraph 2A (refusal of bail where defendant appears to have committed indictable or either way offence while on bail), and
 - (c) paragraph 6 (refusal of bail where defendant has been arrested under section 7).”

14 In paragraph 2 (exceptions to bail where defendant may fail to surrender to custody, commit offences on bail or interfere with witnesses) for sub-paragraph (2) substitute—

“2) Where the defendant falls within paragraph 6B, this paragraph does not apply unless—

 - (a) the court is of the opinion mentioned in paragraph 6A, or
 - (b) paragraph 6A does not apply by virtue of paragraph 6C.”

15 After paragraph 2 insert—

“2ZA (1) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

 - (a) physical or mental injury to an associated person; or
 - (b) an associated person to fear physical or mental injury.

(2) In sub-paragraph (1) “associated person” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.”

16 For paragraph 2A (refusal of bail where defendant appears to have committed offence while on bail) substitute—

“2A The defendant need not be granted bail if—

 - (a) the offence is an indictable offence or an offence triable either way, and
 - (b) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence.”

17 For paragraph 6 (refusal of bail where defendant fails to surrender to custody or has been arrested under section 7) substitute—

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- “6 The defendant need not be granted bail if, having previously been released on bail in, or in connection with, the proceedings, the defendant has been arrested in pursuance of section 7.”
- 18 In paragraph 6A (certain drug users to be refused bail unless no significant risk of offending while on bail) for “is satisfied” substitute “is of the opinion”.
- 19 In paragraph 9 (considerations to which the court must have regard)—
- (a) for “2A(1), 6(1) or 6A” substitute “2ZA(1)”, and
 - (b) after “paragraph 6ZA” insert “or 6A”.
- 20 In paragraph 9AA (court to give particular weight to the fact that an under 18 defendant was on bail when the offence was committed) in sub-paragraph (1)(a) for “under the age of 18” substitute “a child or young person”.
- 21 In paragraph 9AB (factors to be given particular weight by the court when making a decision for the purposes of section 2(1)(a), in the case of an under 18 defendant who has failed to surrender) in sub-paragraph (1)(a) for “under the age of 18” substitute “a child or young person”.
- 22 Part 1A of Schedule 1 (bail for defendants accused or convicted of imprisonable offences to which Part 1 of that Schedule does not apply) is amended in accordance with paragraphs 23 to 26.
- 23 For the heading immediately before paragraph 1 (defendants to whom Part 1A applies) substitute “Application of Part 1A”.
- 24 In paragraph 1 (defendants to whom Part 1A applies) for “The” substitute “Subject to paragraph 1A, the”.
- 25 After paragraph 1 insert—
- “1A (1) The paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in, or in connection with, proceedings where—
 - (a) the defendant has attained the age of 18,
 - (b) the defendant has not been convicted of an offence in those proceedings, and
 - (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.
 - (2) The paragraphs are—
 - (a) paragraph 2 (refusal of bail for failure to surrender to custody),
 - (b) paragraph 3 (refusal of bail where defendant would commit further offences on bail), and
 - (c) paragraph 7 (refusal of bail in certain circumstances when arrested under section 7).”
- 26 (1) Paragraph 4 (refusal of bail to defendants who are likely to cause injury or fear of injury) is amended as follows.
- (2) The existing words become sub-paragraph (1).
 - (3) In paragraphs (a) and (b) of that sub-paragraph for “any person other than the defendant”, in both places those words appear, substitute “an associated person”.

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- (4) After that sub-paragraph insert—
- “(2) In sub-paragraph (1) “associated person” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.”
- 27 Part 2 of Schedule 1 (bail for defendants accused or convicted of non-imprisonable offences) is amended in accordance with paragraphs 28 to 30.
- 28 In paragraph 2 (refusal of bail for failure to surrender to custody) after “bail if—” insert—
- “(za) the defendant—
- (i) is a child or young person, or
- (ii) has been convicted in the proceedings of an offence;”.
- 29 In paragraph 5 (refusal of bail in certain circumstances when arrested under section 7) after “bail if—” insert—
- “(za) the defendant—
- (i) is a child or young person, or
- (ii) has been convicted in the proceedings of an offence;”.
- 30 After paragraph 5 insert—
- “6 (1) The defendant need not be granted bail if—
- (a) having been released on bail in, or in connection with, the proceedings for the offence, the defendant has been arrested in pursuance of section 7, and
- (b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—
- (i) physical or mental injury to an associated person, or
- (ii) an associated person to fear physical or mental injury.
- (2) In sub-paragraph (1) “associated person” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.”
- 31 (1) Paragraph 2 of Part 3 of Schedule 1 (references to previous grants of bail) is amended as follows.
- (2) In paragraph (b) for “section 14(1) of the Criminal Justice Act 2003” substitute “paragraph 16 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012”.
- (3) In paragraph (c) for “section 15(1) of the Criminal Justice Act 2003” substitute “paragraph 17 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012”.
- (4) After paragraph (f) insert “;
- (g) as respects the reference in paragraph 6 of Part 2 of this Schedule, bail granted before the coming into force of that paragraph.”

Bail (Amendment) Act 1993 (c. 26)

- 32 (1) Section 1 of the Bail (Amendment) Act 1993 (prosecution right of appeal where bail is granted) is amended as follows.
- (2) After subsection (1A) insert—
- “(1B) Where a judge of the Crown Court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to the High Court against the granting of bail.
- (1C) An appeal under subsection (1B) may not be made where a judge of the Crown Court has granted bail on an appeal under subsection (1).”
- (3) In subsection (2) for “Subsection (1) above applies” substitute “Subsections (1) and (1B) above apply”.
- (4) In subsections (3), (4) and (8) for “or (1A)” substitute “, (1A) or (1B)”.
- (5) In subsection (10)(a)—
- (a) for “reference in subsection (1)” substitute “references in subsections (1) and (1B)”, and
- (b) for “is to be read as a reference” substitute “are to be read as references”.

Criminal Justice and Public Order Act 1994 (c. 33)

- 33 In section 25 of the Criminal Justice and Public Order Act 1994 (no bail for defendants charged with or convicted of homicide or rape after previous conviction for such offences) in subsection (1) for “is satisfied” substitute “is of the opinion”.

Consequential amendments

- 34 In section 38(2A) of the Police and Criminal Evidence Act 1984 (considerations applicable to paragraph 2 of Part 1 of Schedule 1 to the 1976 Act to be taken into account by custody officer when making decision about bail after charge) for “paragraph 2(2)” substitute “paragraphs 1A and 2(2)”.
- 35 In section 200 of the Extradition Act 2003 (amendments to section 1 of the Bail (Amendment) Act 1993) omit subsections (4)(a) and (7)(a).