



Northern Ireland

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A Guide to Bail Applications



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This guide explains the law and procedure in Northern Ireland where an adult charged with a criminal offence applies to a court to be released on bail.

Note - Different laws apply where the person charged is a child under 18 or where the application is for temporary release on 'compassionate bail' - this guide does not deal with either of those situations

Terminology

For the purposes of this guide:

'The accused' means a person charged with a criminal offence.

'Bail' means the situation where the accused is released from custody by a Court subject to them entering into a recognizance to appear before the court again on a specified date.

'Recognizance' means an undertaking by the accused to the Court whereby they will forfeit a specified sum of money if they fail to attend for trial or breach a condition of their bail (this is often referred to as the accused's "own bail").

'Surety' means a person other than the accused (normally a relative or close friend of the accused) who gives an undertaking to the Court whereby they will forfeit a specified sum of money if the accused fails to attend for trial or breaches a condition of their bail.

Introduction

Where a person is charged with a criminal offence the police may continue to detain the accused in custody while they gather together the evidence for the prosecution. Where they wish to do so, however, the law requires the police to produce the accused before a Magistrates' Court no later than the next day after the day on which the accused was charged (or the day after that where the next day is a Sunday, Christmas Day or Good Friday). The reason the police are required to bring the accused before the Court is so that an independent and impartial Judge can review the lawfulness of the detention and determine whether the accused should continue to be detained in custody until their trial ("remanded in custody") or released until their trial ("remanded on bail").

The law relating to whether a person should be remanded in custody or remanded on bail is the same regardless of whether the application is being made to the Magistrates' Court, the Crown Court or the High Court.

The Law

Where the accused applies for bail, the Judge, who is independent and impartial, will make his/her decision in accordance with the law having considered all the relevant information placed before the Court. The Judge will, amongst other things, analyse all the relevant factors relating to both the individual circumstances of the offence with which the accused is charged (e.g. the seriousness of the offence) and the individual circumstances of the accused (e.g. whether they have previous convictions). This means that each application for bail is unique; even where two people have been charged with an offence together (“co-accused”) their individual bail applications will be unique because their personal circumstances will differ (e.g. one co-accused may have previous convictions for similar offences whereas the other co-accused has not).

(i) The Presumption in Favour of Bail:

The law relating to bail applications is governed by Article 5 of the European Convention on Human Rights. The basic principle contained within Article 5 is that an accused must always be released pending their trial unless the prosecuting authorities can show there are “relevant and sufficient” reasons to justify their continued detention (this is commonly known as “the presumption in favour of bail”).

(ii) The Grounds for Refusing Bail:

The “relevant and sufficient” reasons which may permit the accused to be remanded in custody rather than being granted bail (also known as the “grounds for refusing bail”) are limited to:

- Risk that the accused will fail to appear for trial if they are released on bail;
- Risk that the accused will interfere with the course of justice while on bail (e.g. that they will destroy evidence that could be used against them at their trial or that they could interfere with witnesses who are due to give evidence at their trial);
- Risk that the accused will commit further offences while on bail;
- The accused would be at risk of harm (from himself/herself or from others) against which they would be inadequately protected if released on bail; or
- Risk to the preservation of public order if the accused is released on bail.

These five grounds are the only grounds on which bail can be lawfully refused. Bail cannot be refused simply because the accused has been charged with a very serious offence; but the seriousness of the offence can be taken into consideration as a factor in determining if one of the five grounds for refusing bail exists (e.g. the seriousness of the offence may increase the risk that the accused will fail to appear for their trial).

The burden of proving to the Judge that one or more of the five grounds for refusing bail exists rests on the prosecution. If the prosecution fails to do so, then the presumption in favour of bail prevails and the Judge will remand the accused on bail.

(iii) Bail Conditions:

Where, however, the Judge is satisfied on the evidence presented to him/her that one or more of the grounds for refusing bail has been proven by the prosecution, the Judge must assess whether there are any 'bail conditions' which could be imposed which would sufficiently alleviate the relevant risk contained within the ground(s) for refusing bail. Where the Judge is satisfied that a condition, or combination of conditions, is sufficient to alleviate the risk contained in the relevant ground(s) for refusing bail, the accused will be released on bail subject to those conditions.

Examples of bail conditions which may be considered by the Judge include:

- One or more sureties.
- The accused must reside at a specified address (which may not necessarily be the address where they were living before being charged with the offence).
- The imposition of a curfew whereby the accused must be inside the house between certain hours (such a condition may also contain a requirement that the

accused wear an electronic tag which monitors their presence in the house during the hours of curfew).

- The accused must not enter a defined geographical area.
- The accused must not contact, directly or indirectly, certain specified persons (e.g. the alleged injured party or a co-accused).
- The accused must not drink alcohol (such a condition may also contain a requirement that the accused must submit to a breath test if the police suspect the accused has been drinking alcohol).
- The accused must not enter any licenced premises (e.g. pubs, nightclubs or certain restaurants).
- The accused must not take any drugs which have not been prescribed to them by a doctor.
- The accused must surrender their passport.
- The accused must not use the internet or any device which is capable of accessing the internet.
- The accused must not drive any form of motor vehicle.
- The accused must not be a passenger in/on any form of private motor vehicle

The above list is not exhaustive and the wording of any bail condition(s) is dependent on the individual circumstances of the case and the risk it is seeking to alleviate. Any bail condition, or combination of bail conditions, however, must be proportionate to the legitimate aim which it seeks to achieve (e.g. an accused should not be prohibited from entering the whole of a county simply to ensure that they do not frequent a particular street in a particular town).

Where the Judge, however, is not satisfied that a condition, or combination of conditions, would sufficiently alleviate the risk contained in the relevant ground(s) for refusing bail, the accused will be remanded in custody.

(iv) Reasons for the Decision:

Where the Judge remands the accused on bail subject to conditions, the Judge will state in open court the reasons for imposing the bail conditions in respect of the risk they are aimed at alleviating.

Where the Judge remands the accused in custody, the Judge will explain in open court the ground(s) on which bail is being refused.

(v) Appeals:

Where a Magistrates Court or the Crown Court refuses bail and remands the accused in custody, the accused has the right to make a fresh application for bail to the High Court. The proceedings in the High Court will take the

form of a fresh bail hearing independent of the bail application in the Magistrates' Court or the Crown Court, as the case may be.

Where a Magistrates' Court grants the accused bail (whether or not bail conditions have been imposed) the prosecution may appeal that decision to the High Court. Where the prosecution lodge such an appeal the accused will be detained until the determination of the appeal by the High Court. The proceedings in the High Court will take the form of a fresh bail hearing independent of the bail application in the Magistrates' Court.

Should you require any further information about the NI Courts and Tribunals Service please visit our website at www.courtsni.gov.uk or alternatively contact our Communications Group.

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