



REPUBLIC OF NAURU

BAIL BILL 2018

No. of 2018

A Bill for an Act to provide a legislative framework as to whether a person who is accused of an offence is required to appear before a court, be detained or released and for related purposes

Certified: []

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Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY

1 Short Title

This Act may be cited as the *Bail Act 2018*.

2 Commencement

This Act commences on 15 May 2018 .

3 Definitions

(1) In this Act:

‘accused person’ or **‘person accused of an offence’** means a person who has been arrested for, or charged with, an offence and –

- (a) who is awaiting trial before the District Court;
- (b) who has been committed for trial before the Supreme Court;
- (c) whose trial has been adjourned;
- (d) who has been convicted and –
 - (i) who has been committed for sentence;
 - (ii) whose case has been adjourned for sentence;
 - (iii) who is appealing against conviction or sentence; or
 - (iv) whose conviction or sentence is stayed;
- (e) who is under arrest for a breach of bail or a breach of a bail condition;
or
- (f) who has applied for a writ of *habeas corpus*;

‘appeal’ includes an application for leave to appeal and a proceeding by way of appeal;

‘authorised officer’ means the Registrar of the Courts, Deputy Registrar of the Courts, the clerk of the District Court, or any officers of the court so designated;

‘bail’ for a person accused of an offence means authorisation for the person to be at liberty instead of in custody, on condition that the person appears for trial, for sentence, for hearing for an application or appeal relating to the offence, or for an adjournment of any of those matters, and includes bail granted by a police officer;

'bail condition' means a condition imposed under section 22;

'bail undertaking' means an undertaking given under section 21;

'cognisable offence', in relation to bail, means cognisable offence as defined under section 10 of the Criminal Procedure Act 1972;

'close relative' of a person means a parent, spouse, *de facto* partner, sibling, child or grandparent of the person, or any member of the person's family, clan, or kin identified by the police officer or the court as a close relative;

'continued', in relation to bail, means continued under section 31;

'conviction' includes:

- (a) a finding of guilt;
- (b) a finding that a person is not guilty by reason of insanity;
- (c) a conviction of an offence for which an order is made placing the offender on probation or discharging him or her absolutely or conditionally following a finding that the facts of the charge were proved;

'court' includes the District Court, Supreme Court or Court of Appeal and includes a Resident Magistrate, Judge or Justice of Appeal;

'grant of bail' includes continuation of bail under section 31;

'minor' means a person under the age of 18 years;

'offence' includes an alleged offence;

'police officer' means a police officer of the rank of sergeant or above, and any reference to the police officer is a reference to any police officer of the rank of sergeant or above;

'review' means a review of a bail decision under section 31;

'serious offence' means an offence for which the maximum penalty includes imprisonment for 3 years or more;

'specially affected person' means:

- (a) a person against whom an alleged offence has been committed;
- (b) a close relative of any such person; or
- (c) any other person who in the opinion of the police officer or the court warrants special consideration because of the circumstances of the case;

'surety' means a person, other than the accused person or a person under 18 years, whom a police officer or court determines to be acceptable to

provide confirmation of the accused person's bail undertaking, or security that such undertaking will be complied with; and

'surrender into custody' in relation to a person released on bail, means the person surrendering into the custody of the court or of a police officer as the case may be, at the time and place appointed for doing so.

- (2) In this Act, a reference to *'the police officer'* or *'the court'* means the police officer who or the court which has granted bail or is considering granting bail to a person under this Act.
- (3) In this Act, a reference to a form is a reference to the forms prescribed by regulations.

PART 2 – GENERAL PROVISIONS IN RELATION TO BAIL

4 Entitlement to bail

- (1) Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.
- (2) Bail may be granted by a court or by a police officer under section 9(2).
- (3) There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.
- (4) The presumption in favour of the granting of bail is displaced where the accused person:
 - (a) is charged with an offence of *'murder'*, *'treason'*, or *'contempt of court'*;
 - (b) seeking bail has previously breached a bail undertaking or bail condition;
 - (c) is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury, self-harm or in need of protection;
 - (d) is a fugitive offender arrested under the Extradition Act 1973, Mutual Legal Assistance in Criminal Matters Act 2004 or Counter Terrorism and Transnational Crime Act 2004; or
 - (e) has been convicted and has appealed against the conviction.
- (5) Bail shall be granted to an accused person who is a minor, unless:
 - (a) he or she has a previous criminal conviction;
 - (b) he or she has previously breached a bail undertaking or bail condition;
 - (c) the offence in question is a serious one; or
 - (d) he or she is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury, self-harm or in need of protection.

5 Rights following the grant of bail

- (1) An accused person who is in custody for an offence and who has been granted bail is entitled to be released, upon giving a bail undertaking, and subject to section 26, to remain at liberty until required to appear before a court in accordance with the bail undertaking.
- (2) This section does not apply to a person who is in custody for some other offence or reason in respect of which the person is not entitled to be at liberty, whether under this Act or otherwise.

6 Right to release for certain offences

- (1) This section applies to:
 - (a) any offence not punishable by a sentence of imprisonment; and
 - (b) any offence punishable summarily that is of a class or description prescribed by the regulations for the purposes of this section.
- (2) A person accused of an offence to which this section applies-
 - (a) is entitled to be granted bail unless:
 - (i) the person has previously breached a bail undertaking or bail condition;
 - (ii) in the opinion of the police officer or the court, as the case may be, the person is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury, self-harm, or in need of protection;
 - (iii) the person stands convicted of the offence or the person's conviction for the offence is stayed; or
 - (iv) the requirement for bail is dispensed with under section 8;
 - (b) is entitled to be granted bail either-
 - (i) unconditionally; or
 - (ii) subject to any bail conditions the police officer or the court considers reasonable and appropriate.
- (3) A person is not entitled to be granted bail if the person is in custody serving a sentence of imprisonment in connection with some other offence.

7 Dispensing with bail

- (1) A court that grants bail to an accused person may dispense with the requirements for bail.

- (2) If no specific order or direction is made by a court in respect of bail during the appearance by an accused person before it, the court is deemed to have dispensed with any requirement for bail.
- (3) Subsection (2) does not apply if bail is continued in accordance with section 30.
- (4) Section 16 (1) of this Act continues to apply despite subsection (1).

8 Effect of dispensing with bail

- (1) Subject to section 26, a person accused of an offence in respect of which bail is dispensed with is entitled to remain at liberty in respect of the offence until required to appear before a court in respect of the offence.
- (2) This section does not apply to a person who is in custody for some other offence or reason in respect of which the person is not entitled to be at liberty, whether under this Act or otherwise.

PART 3 – ADMINISTRATION OF BAIL BY POLICE

9 Authority for Police to grant bail

- (1) Subject to subsection (2), if a person is arrested for a cognizable offence and taken to a police station, a police officer may grant bail to the accused person.
- (2) A police officer shall not grant bail to a person accused of an offence if:
 - (a) a determination concerning bail on the same offence has been made by a court;
 - (b) the person has been arrested, or is being investigated, or has been charged for an offence of contempt of court; or
 - (c) the offence is a serious one.
- (3) A police officer may release a person arrested on suspicion that he or she has committed an offence where, after due police enquiry, insufficient evidence is disclosed.

10 Bail determination to be made after charge is laid

If a person has been charged by a police officer with an offence and is in custody, the police officer shall:

- (a) give the person information in writing in a language or any other means the person understands respecting the person's entitlement to bail;
- (b) if authorised to grant bail under section 9, not later than 24 hours after the person has been charged, grant bail to the person or bring the person or cause the person to be brought before a court; and

- (c) if not authorised to grant bail under section 9, bring the person before a court as soon as practicable and in any event within 24 hours.

11 Procedure to be followed by police officers when determining bail

A police officer who makes a determination as to bail shall:

- (a) inform the accused person, or cause the person to be informed, in a language or by any other means the person understands, that the person may consult (including in private) with a lawyer or pleader of his or her choice in relation to bail; and
- (b) if the person so requests, provide the accused person, or cause the person to be provided, with reasonable facilities to enable the person to make such a consultation.

12 Procedure to be followed by police officers if bail not granted

If an accused person is refused bail by a police officer, the police officer who refused bail or another police officer of equal or superior rank shall, as soon as practicable, and in any event within 24 hours, bring the person before a court for a decision on bail by the court.

PART 4 – POWER OF THE COURT TO GRANT BAIL

13 Power of Resident Magistrate, Judges and Justices of Appeal to grant bail

A Resident Magistrate, a Judge, or a Justice of Appeal may at any time:

- (a) grant bail to a person accused of an offence and brought or appearing before the Resident Magistrate, Judge, or Justice of Appeal; or
- (b) grant bail to a person who is an appellant under the provisions of the Supreme Court Act 2018, the Nauru Court of Appeal Act 2018 or any other written law.

14 Bail determinations by the courts

- (1) A court may determine an application for bail by an accused person.
- (2) If an accused person is refused bail in respect of an offence:
 - (a) the hearing of the case shall not be adjourned for more than 14 days except with the person's consent; and
 - (b) any further adjournment shall be for a period not exceeding 48 hours and shall be to a court available to deal with the case.
- (3) Subsection (2) does not apply to an accused person who is in custody in connection with another offence, or if the court is satisfied that there are reasonable grounds for a longer period of adjournment and that bail should continue to be refused.

- (4) If a person charged for an offence has been in custody for over 2 years or more and the trial of the person has not begun, the court shall release the person on bail subject to bail conditions the court thinks fit to impose.
- (5) Subsection (4) does not apply where the trial of the person has begun and the court has refused to grant bail or where the person is serving a sentence for another offence.
- (6) For the purpose of subsection (4), the period of 2 years does not include any period of delay caused by the fault of the person.
- (7) For the purposes of subsection (4), '*trial*' means the trial proper of the person in respect of the offence which the person has been charged with and does not include committal proceedings or the determination of any preliminary or interlocutory application.

15 General provisions as to court bail

- (1) Subject to subsection (3) and section 31 (4), an accused person may make any number of applications to a court for bail.
- (2) An application to a court for bail shall be dealt with as soon as reasonably practicable after it is made.
- (3) A court may refuse to entertain an application for bail if it is satisfied that the application is frivolous or vexatious.

16 Evidence of residence

- (1) A person who is granted bail by a police officer or a court shall at the time of the granting of bail provide the police or to the court, as the case may be, detail of the person's residential address.
- (2) A person who is granted bail and is found to have given a false residential address is liable to be arrested on a warrant by the court and section 26 then applies.
- (3) Subject to subsection (4) a person who is granted bail shall reside at the address provided under subsection (1) until the hearing of the case.
- (4) Where an accused person is on police bail and he or she wishes to reside elsewhere than at the address provided under subsection (1), the person shall, in writing or in person, notify the police officer, and that officer shall make a decision on whether the bail undertaking should be varied accordingly.
- (5) Where an accused person is on bail granted to him or her by a court and he or she wishes to reside elsewhere than at the address provided under subsection (1), the person may file a notice of motion and affidavit applying for a variation of that bail undertaking, and shall not change his or her residence without the leave of the court.

- (6) For the avoidance of doubt, any absence that is more than 24 hours in duration from the residential address given by an accused person under subsection (1) constitutes a change of address requiring notice pursuant to subsection (4) and leave of the court pursuant to subsection (5).

PART 5 – BAIL DETERMINATION

17 General provisions for bail determination

- (1) When deciding whether to grant bail to an accused person, a police officer or court, as the case may be, shall take into account the time the person may have to spend in custody before trial if bail is not granted.
- (2) The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her.
- (3) When a court is considering the granting of bail to a person who has appealed against conviction or sentence, the court shall take into account:
- (a) the likelihood of success in the appeal;
 - (b) the likely time before the appeal hearing; and
 - (c) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.

18 Refusal of bail

- (1) A person making submissions to a court against the presumption in favour of bail shall address the:
- (a) likelihood of the accused person not surrendering to custody and not appearing in court;
 - (b) interests of the accused person; and
 - (c) public interest and the protection of the community.
- (2) If a court decides to refuse bail, it shall give a written ruling on each of the criteria in subsection (1), dealing with the submission made on each one.
- (3) If a police officer refuses to grant bail to an accused person, section 12 applies.
- (4) If a court refuses bail, the court shall remand the accused person in custody to re-appear before that or another court for trial or review of bail within 14 days from the date of refusal or review.

Reasons for refusing bail

- (1) An accused person shall be granted bail unless in the opinion of the police officer or the court, as the case may be:
 - (a) the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
 - (b) the interests of the accused person will not be served through the granting of bail; or
 - (c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.
- (2) In forming the opinion required by subsection (1) a police officer or court shall have regard to all the relevant circumstances and in particular:
 - (a) in relation to the likelihood of surrender to custody:
 - (i) the accused person's background and community ties (including residence, employment, family situation, previous criminal history);
 - (ii) any previous failure by the person to surrender to custody or to observe bail conditions;
 - (iii) the circumstances, nature and seriousness of the offence;
 - (iv) the strength of the prosecution case;
 - (v) the severity of the likely penalty if the person is found guilty; or
 - (vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);
 - (b) in relation to the interests of the accused person:
 - (i) the length of time the person is likely to have to remain in custody before the case is heard;
 - (ii) the conditions of that custody;
 - (iii) the need for the person to obtain legal advice and to prepare a defence;
 - (iv) the need for the person to be at liberty for other lawful purposes (such as employment, education, care of dependants);
 - (v) whether the person is a minor (in which case section 4 (5) applies); or

- (vi) whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;
- (c) in relation to the public interest and the protection of the community:
 - (i) any previous failure by the accused person to surrender to custody or to observe bail conditions;
 - (ii) the likelihood of the person interfering with evidence, witnesses or assessors or any specially affected person; or
 - (iii) the likelihood of the accused person committing an arrestable offence while on bail.

20 Reasons to be recorded

- (1) If bail is refused the police officer or the court, as the case may be, shall record in writing the reasons for refusing bail.
- (2) The written reasons shall be conveyed to the accused person, in a language the person understands, as soon as practicable after the decision has been made, in any event no longer than 24 hours after it was made.
- (3) If bail is refused the police officer shall inform the accused person of the procedure for review of bail under section 31.

PART 6 – BAIL CONDITIONS

21 Bail undertakings

- (1) A person shall not be released on bail unless the person gives a written undertaking:
 - (a) to a police officer, to surrender into the custody of a court specified in the undertaking and on a day and at a place so specified;
 - (b) to a court, to appear before the court on a day and at a place specified in the bail undertaking; or
 - (c) if bail is continued by a court, to appear at the time and place at which the proceedings in respect of the offence will be continued, as specified in the bail undertaking or a notice to be sent to the person.
- (2) A bail undertaking shall be given in the form prescribed by regulations.
- (3) An accused person who is granted bail shall appear in person before a court in accordance with the person's bail undertaking.

22 Conditions of bail

- (1) A court or police officer may:

- (a) impose such conditions as are necessary when granting bail; or
 - (b) release the accused on bail without any conditions.
- (2) The court shall have jurisdiction to review the conditions of bail where:
- (a) an accused person breaches the conditions of the bail undertaking;
 - (b) an accused person is charged with or convicted or sentenced for a separate offence;
 - (c) an accused person seeks variation for personal, humane, compassionate or health reasons; or
 - (d) circumstances exist, which in the view of the Resident Magistrate, a Judge or Justice of Appeal, justifies a review of the conditions of bail.
- (3) The conditions imposed for the granting of bail under subsection (1) may include:
- (a) that the accused person surrender any passports or travel documents in his or her possession to an authorised officer;
 - (b) that the accused person be barred from applying for or obtaining any passport or travel documents;
 - (c) that the accused person not commit an offence while released on bail;
 - (d) that the accused person provide one or more sureties who acknowledge that he or she is acquainted with the accused person and regards the accused person, as a responsible person who is likely to comply with a bail undertaking;
 - (e) that the accused person not interfere with witnesses;
 - (f) that the accused person enters into an agreement, without security, to forfeit a specified amount of money into the Courts Trust Fund if the accused person fails to comply with his or her bail undertaking;
 - (g) that one or more sureties enters into an agreement, without security, to forfeit a specified amount of money into the Courts Trust Fund if the accused person fails to comply with his or her bail undertaking;
 - (h) that the accused person enters into an agreement, and deposits acceptable security, to forfeit a specified amount of money into the Courts Trust Fund if the accused person fails to comply with his or her bail undertaking;
 - (i) that one or more sureties enters into an agreement, and deposits acceptable security, to forfeit a specified amount of money into the Courts Trust Fund if the accused person fails to comply with his or her bail undertaking;

- (j) that the accused person deposits with an authorised officer of the court a specified amount of money in cash and enters into an agreement to forfeit the amount deposited into the Courts Trust Fund if the accused person fails to comply with his or her bail undertaking;
 - (k) that one or more sureties deposits with an authorised officer of the court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited into the Courts Trust Fund if the accused person fails to comply with his or her bail undertaking; or
 - (l) such other conditions as the court may deem fit.
- (4) If security by an accused person or surety under this section is considered necessary as a condition of bail, the police officer or the court, as the case may be, shall ascertain, under oath if necessary, the ability of the accused person or the surety to provide the security.
- (5) If security under this section is required, it shall be set with reference to the capacity of the accused person or acceptable person to meet the obligation.
- (6) A requirement for security as referred to in this section shall not be imposed if it amounts to an unreasonable impediment to the granting of bail.
- (7) Any acknowledgement or agreement referred to in this section shall be given:
- (a) if by the accused, in the bail undertaking;
 - (b) if by a surety, in the form prescribed by regulations.
- (8) An acknowledgement or agreement under this section may be entered into in respect of more than one offence at the same time.
- (9) An accused person and any person offering himself or herself as a surety may appeal to the Supreme Court or Court of Appeal, as the case may be, if a police officer or court refuses to accept a person as surety or any proposed security.
- (10) Where the conditions of bail are breached, and without limiting the right of the Republic to charge an accused person for a breach of bail condition, a court may:
- (a) revoke bail; or
 - (b) grant such other orders as it deems fit.

23 Restrictions on imposing bail conditions

- (1) Bail shall be granted unconditionally unless the police officer or the court, as the case may be, considers that one or more of the conditions in section 22 should be imposed for the purpose of:

- (a) ensuring the accused person's surrender into custody and appearance in court;
 - (b) protecting the welfare of the community; or
 - (c) protecting the welfare of any specially affected person.
- (2) Conditions shall only be imposed:
- (a) to protect the welfare of the community;
 - (b) to protect the welfare of any specially affected person; or
 - (c) in the interests of the accused person, -
- and may only be imposed if required by the circumstances of the accused person.

24 Provisions respecting money or security

- (1) Any money deposited or security offered under section 22 to satisfy a condition of bail remains the property of the accused person or surety who deposits the money or offers the security, unless it is forfeited under section 28.
- (2) Where money is deposited or security is offered by more than one surety jointly, the money or security remains the property of the sureties jointly and severally unless it is forfeited under section 28.

25 Procedure on surrender to custody

- (1) An accused person to whom bail had been granted shall surrender into the custody of an authorised officer at the time, date and place designated by the court.
- (2) The authorised officer shall receive the accused person into custody and ensure that the person remains in custody until the hearing is determined or bail is continued.
- (3) The court when granting bail shall advise the accused person, in a language that the person understands, of the person's obligation to surrender to the custody of the court, and explain the procedures for complying with the obligations.
- (4) In this section, 'custody' means the jurisdiction of the court for the purposes of this Act.

PART 7 – OFFENCES AND PENALTIES

26 Accused person absconding or breaching conditions of bail

- (1) If an accused person who has been released on bail:
 - (a) fails to surrender to custody;
 - (b) otherwise breaches a condition of bail;
 - (c) absents himself or herself from the court without the court's leave at any time after he or she has surrendered to custody; or
 - (d) is found to have given a false residential address contrary to section 16(1), -

the court may issue a warrant for the arrest of the accused person.

- (2) A person who has been released on bail may be arrested without warrant-
 - (a) if a police officer reasonably suspects that the accused person is unlikely to surrender to custody; or
 - (b) if a police officer reasonably believes that the person is likely to break any of the conditions of the bail, or has broken any of those conditions.
- (3) A person arrested pursuant to subsection (2) shall be brought as soon as practicable, and in any event within 24 hours after the arrest, before a Justice of Appeal, a Judge or a Resident Magistrate, as the case may be, who may remand the person in custody or grant him or her bail subject to conditions, which may be the same as or different from those originally imposed.

27 Penalty for absconding, giving false residential address or breaching bail conditions

- (1) A person who has been released on bail and who fails without reasonable cause to surrender to custody, gives a false residential address, or otherwise without reasonable cause, breaches any condition of bail imposed by a court, commits an offence and is liable on conviction to a fine of \$2000 or 12 months imprisonment, or both.
- (2) The burden is on the accused person to prove that he or she had reasonable cause for failing to surrender to custody or for a breach of his or her bail conditions.
- (3) An offence under this section is an offence of strict liability.

28 Forfeiture of security

- (1) This section applies where bail is granted subject to the provision of security pursuant to section 22.
- (2) If a person who has been released on bail fails without reasonable cause to surrender into custody, or otherwise breaches a condition of bail, the court may:

- (a) order that the whole or any part of the money deposited or security given by the person be forfeited to the Courts Trust Fund; or
 - (b) unless cause is shown to the contrary within a period the court directs, order that the whole or any part of the money deposited or security given by a surety be forfeited to the Courts Trust Fund.
- (3) Any sum ordered to be paid under this section may be enforced as if it were a fine and as if the order were a sentence for an offence.
- (4) A court may review a decision made under subsection (2) if it is satisfied on an application made by or on behalf of the accused person or a surety that the accused had reasonable cause of the failure to surrender to custody, or for the breach of the bail condition.

29 Discharge of security

- (1) A person who agrees under section 22 to act as a surety for an accused person may apply:
- (a) if the bail was granted by a court, to the court or to any other court to which the accused person is bailed to appear; or
 - (b) if the bail was granted by a police officer for appearance at a court, to that court, -
- to discharge the person from his or her liability as surety.
- (2) On an application under subsection (1) the court shall, if the accused person is not then in custody or before the court:
- (a) issue a warrant to apprehend the accused person and bring him or her before the court; or
 - (b) issue a summons for the person's appearance before the court.
- (3) On the appearance of the accused person before the court, the court shall, unless satisfied that it would be unjust to do so, direct that the surety be discharged from his or her liability and the surety is thereby discharged.
- (4) If the court discharges the surety from his or her liability, it may impose further conditions on the grant of bail, and may commit the accused person to prison until those conditions are complied with.

PART 8 – CONTINUATION OR GRANT OF BAIL ON ADJOURNMENT ETC.

30 Continuation of bail

- (1) If a bail undertaking includes an undertaking to appear at any time and place at which proceedings in respect of the offence are continued, whether upon

adjournment, committal or otherwise, a court may continue bail already granted in respect of the offence.

- (2) If bail is continued under subsection (1), the bail undertaking and conditions, including any sureties and any security, continue to apply, except to the extent that a condition, or any agreement under a condition, otherwise provides or the court otherwise orders.
- (3) If the accused person appears before a court in accordance with a bail undertaking referred to in subsection (1) and no specific direction is made by the court in respect of bail upon adjournment or committal, the court is taken to have continued bail on the same conditions which applied immediately before the person's appearance in court, whether a hearing, an adjournment, a committal or otherwise.
- (4) If a bail undertaking does not include the undertaking mentioned in subsection (1), but the case is adjourned or the accused person is committed for trial or sentence, the court shall, if bail is applied for, make a fresh bail determination.
- (5) If an accused person has been convicted and is appealing against conviction or sentence, bail may be continued if subsection (1) applies, or may be granted on a fresh bail determination, if applied for, and Parts 4 and 5 apply with necessary modifications to a decision made under this subsection.
- (6) The forms prescribed by regulations may be used with necessary modifications in relation to the grant of bail on an appeal or on committal for sentence.

PART 9 – REVIEW OF AND APPEALS ON BAIL DECISIONS

31

Power of review

- (1) A Resident Magistrate may review any decision made by a police officer in relation to bail.
- (2) A Resident Magistrate may review a decision made by another Resident Magistrate, including a reviewing Resident Magistrate, in relation to bail.
- (3) The Supreme Court may review any decision made by it, by a Resident Magistrate or by a police officer in relation to bail.
- (4) The Court of Appeal may review any decision made by it in relation to bail.
- (5) A court which has power to review a bail determination, or to hear a fresh application under section 15 (1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application, refuse to hear the review or application.
- (6) The power to review a decision under this Part in relation to an accused person may be exercised only at the request of the:

- (a) accused person;
 - (b) police officer who instituted the proceedings for the offence of which the person is accused;
 - (c) Secretary for Justice;
 - (d) Director of Public Prosecutions; or
 - (e) victim of the offence.
- (7) The power to review a decision under this Part includes the power to confirm, reverse or vary the decision.
- (8) The review shall be by way of a rehearing, and evidence or information given or obtained on the making of the decision may be given or obtained on review.

32 Appeals on bail decisions

- (1) All grants or refusals of bail and all orders, conditions or limitations made or imposed under this Act are appealable to the Supreme Court or the Court of Appeal, as the case may be, upon the application either of the person granted or refused bail or of the Director of Public Prosecutions.
- (2) The Supreme Court may:
- (a) in its original jurisdiction grant or refuse bail upon such terms as it considers just; or
 - (b) on an appeal under subsection (1), confirm, reverse or vary the decision appealed from.
- (3) The Court of Appeal may:
- (a) confirm, reserve or vary the decision appealed from; and
 - (b) grant or refuse bail pending trial upon such terms as it deems fit.
- (4) This section is in addition to section 22 (8) (as to the acceptance of sureties or security) and section 31 (as to review of bail decisions).

PART 10 – MISCELLANEOUS

33 Regulations

- (1) Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for:

- (a) any forms that are required under this Act;
 - (b) fees for any with respect to the manner of making application to a court in relation to bail;
 - (c) prescribing classes or descriptions of offences punishable summarily to which section 6(1) (b) applies;
 - (d) limiting the powers of review conferred by subsections (1), (2), and (3) of section 31; and
- (a) generally for carrying into effect the provisions of this Act.

34 Repeal and savings

- (1) Sections 21 and 80 - 89 of the Criminal Procedure Act 1972 are repealed.
- (2) Regulations made under the repealed provisions which could have been made under section 33 of this Act are deemed to have been made under that section and remain of full force and effect until repealed or amended under this Act.
- (3) Any regulations made under the repealed provisions which could not have been made under section 33 of this Act remain in full force and effect until repealed or amended under this subsection.
- (4) Any decision in respect of bail made under the repealed provisions which has not had effect before the commencement of this Act remains in force as if made under this Act.
- (5) In this section, '*repealed provision*' means any of sections 21 and 80 - 89 of the Criminal Procedure Act 1972.
- (6) Subsections (4) to (7) of section 14 apply to a person who has been in custody for 2 years or more at the commencement of this Act.