

## **BAIL (MISCELLANEOUS PROVISIONS) BILL**

### **EXPLANATORY NOTE**

THIS Bill makes various amendments to the law relating to bail. It amends the Summary Proceedings Act 1957, the Crimes Act 1961, and the District Courts Act 1947.

The principal effect of the Bill is to impose restrictions on the granting of bail to persons 17 and over who are charged with or convicted of certain specified offences (which include murder, manslaughter, sexual violation, and aggravated robbery) and who have 2 or more previous convictions for any such offence. Such persons are not to be granted bail or allowed to go at large unless they satisfy the Court on the balance of probabilities that bail should be granted, and, in particular, that they will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person. In addition, in deciding whether or not to grant bail to such persons or allow them to go at large, the Court is to have regard, among other matters, to the need to protect the public.

The other main effects of the Bill are—

- (a) To provide general rights of appeal to the prosecution and the defence against decisions of the High Court or a District Court to grant or refuse bail, or to impose or refuse to impose conditions of bail;
- (b) To provide for the prosecution to seek a variation of the conditions of bail imposed by a District Court (the defence already has this right), and to provide for the prosecution and the defence to seek a variation of the conditions of bail imposed by the High Court.

#### *Clause By Clause Analysis*

*Clause 1* relates to the Short Title and commencement. The Bill is to come into force on 1 May 1991. The Bill is drafted so that at the appropriate stage it can be divided into 3 separate Bills: a Summary Proceedings Amendment Bill, a Crimes Amendment Bill, and a District Courts Amendment Bill.

### **PART I**

#### **AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957**

*Clause 3* amends section 46 (2) of the Summary Proceedings Act 1957 (which relates to the granting of bail on adjournments).

No. 12—1

The effect of the amendment is that the power to grant bail will be subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as substituted by *clause 19*).

*Clause 4* repeals section 50A of the Summary Proceedings Act 1957 (which relates to the variation of the conditions of bail), and substitutes a new section.

The effect of the amendment is to extend the provisions of section 50A (1) to enable the Court to substitute conditions of bail and to impose new conditions. The provision is also extended to empower the prosecution to apply for the variation of conditions of bail. Provision is also made for the preparation and execution of a fresh notice of bail if, as a result of an application under subsection (1) of the section, the conditions of bail are altered.

*Clause 5* amends subsection (3) of section 53 of the Summary Proceedings Act 1957.

The effect of the amendment is that the power conferred by that subsection to grant bail will be subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as substituted by *clause 19*).

*Clause 6* amends subsection (4) of section 75 of the Summary Proceedings Act 1957.

The effect of the amendment is that the power conferred by that subsection to grant bail will be subject to the provisions of sections 318 and 319 of the Crimes Act 1961 (as substituted by *clause 19*).

*Clause 7* repeals section 115D of the Summary Proceedings Act 1957, and substitutes new sections 115D to 115F.

The new provisions replace the current right of a defendant to appeal to the High Court against a decision of a District Court imposing a condition of bail. They provide both the defendant and the informant with general rights of appeal to the High Court against decisions of a District Court relating to bail. However, the informant may not appeal without the consent of the Solicitor-General. The inherent jurisdiction of the High Court to grant bail is not affected.

*Clause 8* amends section 116 (1A) of the Summary Proceedings Act 1957.

The effect of the amendment is that notices of appeal under section 115D of that Act will have to be filed within 28 days, rather than 3 days as at present.

*Clause 9* amends section 118 of the Summary Proceedings Act 1957.

The effect of the amendment is to make it clear that a Registrar can engage someone else to notify the parties of the time and place appointed for the hearing of an appeal and does not have to do the notification personally.

*Clause 10* amends section 125 of the Summary Proceedings Act 1957.

The effect of the amendment is that the power conferred by subsection (1) of that section to grant bail will be subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as substituted by *clause 19*).

Subsection (4) of section 125 of the Summary Proceedings Act 1957 is also repealed and a new subsection substituted. The effect of the amendment is that the appeal rights conferred by section 115D of that Act (as amended by *clause 7*) will replace the current provision for a review by the High Court of bail decisions under section 125.

*Clause 11* amends section 135 of the Summary Proceedings Act 1957.

The amendments are consequential upon the amendments effected by *clause 7*, and relate to the execution of decisions of the High Court on appeals under section 115D of the Summary Proceedings Act 1957. Where the decision of the High Court is that bail should not be granted or continued, the new proviso to subsection (3) of section 135 provides for the issue of a warrant for the detention of the defendant in custody. Where the decision of the High Court is to vary the

conditions of bail, the new subsections (3A) and (3B) of section 135 provide for the preparation and execution of a fresh notice of bail.

*Clause 12* amends section 136 (1) of the Summary Proceedings Act 1957.

The effect of the amendment is to provide that where the result of an appeal under section 115D of the Summary Proceedings Act 1957 is that bail is denied, the defendant may be arrested without warrant by any constable or any officer of a penal institution.

*Clause 13* amends section 153 of the Summary Proceedings Act 1957 (which relates to the application of the provisions of Part II of that Act to preliminary hearings of indictable offences).

The effect of the amendment is—

- (a) To reinstate a reference to section 55 of the Summary Proceedings Act 1957 (which relates to the arrest of a defendant released on bail who does not attend the hearing);
- (b) To apply the provisions of sections 115D to 115F of the Act (as substituted by *clause 7*) to decisions relating to bail made under the provisions applied by section 153.

*Clause 14* amends section 153A of the Summary Proceedings Act 1957 (which relates to a plea of guilty before or during a preliminary hearing) by inserting a new subsection (6B).

The effect of the amendment is to apply the provisions of sections 115D to 115F of the Act (as substituted by *clause 7*) to decisions relating to bail made where proceedings are adjourned as the result of such a guilty plea.

*Clause 15* amends section 168 of the Summary Proceedings Act 1957 (which relates to the committal of a defendant for trial or for sentence at the conclusion of a preliminary hearing) by inserting a new subsection (1B).

The effect of the amendment is to apply the provisions of sections 115D to 115F of the Act (as substituted by *clause 7*) to decisions relating to bail made where proceedings are adjourned at the end of the preliminary hearing.

*Clause 16* amends section 171 of the Summary Proceedings Act 1957 (which relates to the release on bail of a defendant committed for trial or for sentence at the conclusion of a preliminary hearing) by adding a new subsection (5).

The effect of the amendment is to apply the provisions of sections 115D to 115F of the Act (as substituted by *clause 7*) to decisions relating to bail made in those circumstances.

*Clause 17* effects consequential repeals.

## PART II

### AMENDMENTS TO CRIMES ACT 1961

*Clause 19* repeals section 318 of the Crimes Act 1961 and substitutes a new section.

The existing section provides that a person who is charged with treason or espionage may not be granted bail except by order of the Governor-General or a Judge of the High Court. This provision is retained (see the new subsection (1)).

In addition, new subsections (2) to (5) restrict the granting of bail to persons 17 and over who are charged with or convicted of certain specified offences (which include murder, manslaughter, sexual violation, and aggravated robbery) and who have 2 or more previous convictions for any such offence. Such persons are not to be granted bail or allowed to go at large unless they satisfy the Court on the balance of probabilities that bail should be granted, and, in particular, that they will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person. In addition, in deciding whether or not to grant bail to such persons or allow them to go at

large, the Court is to have regard, among other matters, to the need to protect the public.

*Clause 20* amends section 320 of the Crimes Act 1961 (which provides for the arrest of persons granted bail who have absconded or are about to abscond, and empowers the Court to order them to be detained in custody or again be granted bail).

The effect of the amendment is to make that power to grant bail subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as amended by *clause 19*).

*Clause 21* inserts a new section 320A into the Crimes Act 1961.

The new section provides for the variation of conditions of bail where bail has been granted by the High Court. The provision mirrors section 50A of the Summary Proceedings Act 1957 (as substituted by *clause 4*), except that where the High Court has granted bail with sureties, an application for variation of the conditions of bail may not be made without the written consent of the sureties.

*Clause 22* amends section 323 of the Crimes Act 1961 (which provides for the granting of bail where an order is made for the trial of any person at a substituted Court).

The effect of the amendment is to make that power to grant bail subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as amended by *clause 19*).

*Clause 23* amends section 350 (2) of the Crimes Act 1961 (which provides for the granting of bail to persons who do not attend to plead to an indictment or to be sentenced and who are arrested pursuant to a bench warrant).

The effect of the amendment is to make that power to grant bail subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as amended by *clause 19*).

*Clause 24* amends section 371 (6) of the Crimes Act 1961 (which provides for the granting of bail pending the imposition of sentence).

The effect of the amendment is to make that power to grant bail subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as amended by *clause 19*).

*Clause 25* inserts new sections 379B to 379D into the Crimes Act 1961.

The new sections provide general rights of appeal to the Court of Appeal to both the prosecution and the defence against decisions of the High Court at first instance to grant or refuse bail, to impose or refuse to impose conditions of bail, or to vary or revoke any condition of bail.

The rights of appeal do not apply in respect of decisions made in any proceedings for drug-dealing offences. The Misuse of Drugs Amendment Act 1978 makes special provision for such cases.

*Clause 26* amends section 380 (5) of the Crimes Act 1961 (which provides for the granting of bail where a person is convicted but a question of law is reserved for the Court of Appeal).

The effect of the amendment is to make that power to grant bail subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as amended by *clause 19*).

*Clause 27* amends section 382 (2) of the Crimes Act 1961. The amendment is consequential upon the amendments effected by *clause 25*.

*Clause 28* amends section 397 (2) of the Crimes Act 1961 (which provides for the granting of bail pending the determination of an appeal to the Court of Appeal).

The effect of the amendment is to make that power to grant bail subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as amended by *clause 19*).

*Clause 29* amends section 399(6) of the Crimes Act 1961 (which provides for the granting of bail pending trial where a new trial has been directed by the Court of Appeal).

The effect of the amendment is to make that power to grant bail subject to the restrictions imposed by section 318 of the Crimes Act 1961 (as amended by *clause 19*).

### PART III

#### AMENDMENTS TO DISTRICT COURTS ACT 1947

*Clause 31* amends section 28E of the District Courts Act 1947 (which relates to the powers of a District Court on a District Court jury trial).

The effect of the amendments are—

- (a) To update the references to the provisions of the Summary Proceedings Act 1957 in subsection (2) of section 28E as a consequence of the amendments to that Act made by the Summary Proceedings Amendment Act (No. 2) 1987:
- (b) To apply the provisions of sections 115D to 115F of the Summary Proceedings Act 1957 (as substituted by *clause 7*) to decisions relating to bail made under the provisions of subsection (2) of section 28E or any of the provisions referred to in that subsection.

*Clause 32* effects a consequential repeal.

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**BAIL (MISCELLANEOUS PROVISIONS)**

ANALYSIS

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## A BILL INTITULED

**An Act to amend the law relating to bail**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Bail (Miscellaneous Provisions) Act 1990. 5

(2) This Act shall come into force on the 1st day of May 1991.

## PART I

## AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957

**2. Part to be read with Summary Proceedings Act 1957**—This Part of this Act shall be read together with and deemed part of the Summary Proceedings Act 1957\* (in this Part referred to as the principal Act). 10

\*R.S. Vol. 9, p. 583

Amendments: 1982, No. 47; 1982, No. 131; 1982, No. 158; 1985, No. 51; 1985, No. 55; 1985, No. 99; 1985, No. 162; 1985, No. 191; 1986, No. 73; 1986, No. 76; 1987, No. 165; 1987, No. 172; 1989, Nos. 21, 105

**3. Dealing with defendant on adjournment**—Section 46 (2) of the principal Act (as substituted by section 2 of the Summary Proceedings Amendment Act (No. 2) 1987), is hereby amended by omitting the expression “section 319”, and substituting the expression “sections 318 and 319”. 15

**4. Variation of conditions of bail**—The principal Act is hereby amended by repealing section 50A (as inserted by section 2 of the Summary Proceedings Amendment Act (No. 2) 1987), and substituting the following section: 20

“50A. (1) Where the defendant has been granted bail, any District Court Judge may, on the application of the defendant or the informant, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail. 25

“(2) Where any Court or Justice has, in granting bail to any defendant, imposed the condition that the defendant report to the police at such time or times and at such place or places as the Court or Justice orders, any Registrar may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to so report. 30

“(3) Where, pursuant to subsection (1) of this section, any Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions shall apply: 35

- 5 “(a) If the defendant is present at the Court, the Registrar shall forthwith prepare a new notice of bail setting out the conditions of bail as so amended (if any), satisfy himself or herself that the defendant understands the conditions of bail, and require the defendant to sign the notice of bail:
- 10 “(b) If the defendant is not present at the Court, the Registrar shall send written notice to the defendant requiring him or her to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions as so amended (if any).
- 15 “(4) If, in any case to which **subsection (3)** of this section applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh notice of bail as aforesaid, the Registrar shall refer the matter to a District Court Judge, who may issue a warrant for the arrest of the defendant.”

20 **5. Defendant on bail may be arrested without warrant in certain circumstances**—Section 53 (3) of the principal Act (as substituted by section 3 of the Summary Proceedings Amendment Act (No. 2) 1987) is hereby amended by omitting the words “notwithstanding anything in the Crimes Act 1961”, and substituting the words “subject to section 318 of the Crimes Act 1961 but notwithstanding any other provision of that Act”.

25

**6. District Court Judge or Justice may grant a rehearing**—Section 75 (4) of the principal Act is hereby amended by omitting the expression “section 319 of the Crimes Act 1961” (as substituted by section 4 (1) (e) of the Summary Proceedings Amendment Act 1961), and substituting the expression “sections 318 and 319 of the Crimes Act 1961”.

30

**7. New sections (relating to appeals from decisions on bail) substituted**—The principal Act is hereby amended by repealing section 115D (as inserted by section 5 of the Summary Proceedings Amendment Act (No. 2) 1987), and substituting the following sections:

35

**“115D. Rights of appeal against decisions relating to bail**—(1) Where a District Court Judge or Justice or Justices refuse to grant bail to a defendant, the defendant may appeal to the High Court against that refusal.

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“(2) Where a District Court Judge or Justice or Justices grant bail to any defendant, the informant may appeal to the High Court against that decision.

“(3) Where, in respect of any grant of bail to a defendant,—

“(a) A District Court Judge or Justice or Justices have imposed any condition of bail, or have refused to impose any condition of bail, or any particular condition of bail; or

“(b) A District Court Judge has, on an application made under section 50A(1) of this Act, made an order varying or revoking any condition of bail or substituting or imposing any other condition of bail, or refused to make such an order,—

the defendant or the informant may appeal to the High Court against the imposition of that condition of bail or, as the case may be, against that refusal or against the decision in respect of that application.

“(4) For the purposes of any appeal under this section, the failure of a District Court Judge or Justice or Justices to impose any condition of bail, or any particular condition of bail, on any occasion on which any such condition could lawfully have been imposed shall be deemed to be a refusal to impose such a condition.

“(5) Nothing in this section shall limit or affect the jurisdiction of the High Court to hear and determine an application for bail by a person who has been refused bail by a District Court Judge or Justice.

“115E. **Restriction on informant’s rights of appeal under section 115D**—(1) No appeal shall be brought under section 115D of this Act by any informant unless the consent of the Solicitor-General has first been obtained and is lodged with the notice of appeal.

“(2) Any document evidencing the Solicitor-General’s consent for the purposes of subsection (1) of this section may be signed on the Solicitor-General’s behalf by a person purporting to be a Crown Counsel.

“115F. **Procedural provisions applying to appeals under section 115D**—(1) Subject to subsections (2) and (4) of this section, the provisions of sections 116 to 143 of this Act, as far as they are applicable and with all necessary modifications, shall apply to every appeal under section 115D of this Act as if the decision of the District Court appealed against were an order.

“(2) Notwithstanding anything in section 119 (2) of this Act, and notwithstanding any other enactment or rule of law, on the hearing of any appeal under section 115D of this Act it shall not be necessary to produce—

5 “(a) Any note or transcript of the evidence adduced to the Court appealed from; or

“(b) Any note of the reasons for the decision appealed against; or

10 “(c) Any copy of any note or transcript referred to in paragraph (a) or paragraph (b) of this subsection.

“(3) Nothing in section 144 of this Act shall apply in respect of any appeal under section 115D of this Act.

15 “(4) No decision of any District Court Judge or Justice or Justices appealed against under section 115D of this Act shall be suspended merely because notice of that appeal has been given.

20 “(5) Every appeal under section 115D of this Act that is not heard before the date on which the decision appealed against ceases to have any effect shall lapse on that date and shall be deemed to have been dismissed by the High Court for non-prosecution.”

**8. Notice of appeal**—Section 116 (1A) of the principal Act (as inserted by section 2 (4) of the Summary Proceedings Amendment Act (No. 5) 1985) is hereby amended by omitting the words “or section 115D” (as inserted by section 8 (2) of the  
25 Summary Proceedings Amendment Act (No. 2) 1987).

**9. Setting down appeal for hearing**—Section 118 of the principal Act is hereby amended by inserting, after the word “notify”, the words “or cause to be notified”.

**10. Granting of bail to appellant who is in custody**—  
30 (1) Section 125 (1) of the principal Act is hereby amended by inserting, after the expression “Misuse of Drugs Amendment Act 1978” (as inserted by section 2 (2) of the Summary Proceedings Amendment Act 1978), the expression “and to section 318 of the Crimes Act 1961”.

35 (2) Section 125 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

40 “(4) Where an appellant is granted or refused bail under this section, or any decision is made under section 50A (1) of this Act (as applied by subsection (3) of this section) in respect of any appellant, the provisions of sections 115D to 115F of this Act, as far as they are applicable and with all necessary

modifications, shall apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail.”

**11. Execution of decision of High Court—**(1) Section 135 (3) of the principal Act is hereby amended by adding the following proviso: 5

“Provided also that, where the High Court, on an appeal under **section 115D** of this Act, determines that bail should not be granted or, as the case may be, should not be continued, a warrant for the detention of the defendant in custody shall be issued out of the High Court and signed by a Judge; and the person who executes that warrant shall ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.” 10

(2) Section 135 of the principal Act is hereby amended by inserting, after subsection (3), the following subsections: 15

“(3A) Where, on any appeal in respect of any condition of bail, the High Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions shall apply: 20

“(a) If the defendant is present at the Court, the Registrar of the High Court shall forthwith prepare a new notice of bail setting out the conditions of bail as so amended (if any), satisfy himself or herself that the defendant understands the conditions of bail, and require the defendant to sign the notice of bail: 25

“(b) If the defendant is not present at the Court, the Registrar of the Court appealed from shall send written notice to the defendant requiring him or her to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions (if any) required to give effect to the High Court’s decision. 30

“(3B) If, in any case to which **subsection (3A)** of this section applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh notice of bail as aforesaid, the Registrar shall refer the matter to a District Court Judge, who may issue a warrant for the arrest of the defendant.” 35

**12. Custody of person after determination of appeal—** 40  
Section 136(1) of the principal Act is hereby amended by inserting, after the word “detention”, the words “or to be detained in custody”.

**13. Application of provisions of Part II**—(1) Section 153 of the principal Act is hereby amended by inserting, after paragraph (h) (as substituted by section 8 (2) of the Summary Proceedings Amendment Act (No. 2) 1987), the following paragraph:

5 “(ha) Section 55 (which relates to the arrest of a defendant released on bail who does not attend the hearing):”.

(2) Section 153 of the principal Act is hereby amended by adding the following subsection:

10 “(2) Where, by virtue of any of the provisions applied by subsection (1) of this section with respect to proceedings to which this Part of this Act applies, a defendant is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of **sections 115D to 115F** of this Act, as far as they are applicable and all necessary modifications, shall apply accordingly.”

**14. Defendant may plead guilty before or during preliminary hearing**—Section 153A of the principal Act (as inserted by section 15 (1) of the Summary Proceedings Amendment Act 1976) is hereby amended by inserting, after subsection (6A) (as inserted by section 10 of the Summary Proceedings Amendment Act 1980), the following subsection:

25 “(6B) Where, by virtue of subsection (6A) of this section or of any of the provisions of Part II of this Act (as applied by that subsection), a defendant is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of **sections 115D to 115F** of this Act, as far as they are applicable and with all necessary modifications, shall apply accordingly.”

**15. If evidence sufficient defendant may be committed for trial or for sentence**—Section 168 of the principal Act is hereby amended by inserting, after subsection (1A) (as inserted by section 11 (5) of the Summary Proceedings Amendment Act 1980), the following subsection:

35 “(1B) Where, by virtue of subsection (1A) of this section or of any of the provisions of Part II of this Act (as applied by that subsection), a defendant is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of **sections 115D to**

115F of this Act, as far as they are applicable and with all necessary modifications, shall apply accordingly.”

**16. Release on bail of defendant committed for trial or for sentence**—Section 171 of the principal Act is hereby amended by adding the following subsection: 5

“(5) Where, by virtue of any of the provisions of this section or of Part II of this Act (as applied by this section), a defendant who has been committed for trial or for sentence is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of sections 115D to 115F of this Act, as far as they are applicable and with all necessary modifications, shall apply accordingly.” 10

**17. Consequential repeals**—(1) Section 4 (1) (e) of the Summary Proceedings Amendment Act 1961 is hereby consequentially repealed. 15

(2) The Summary Proceedings Amendment Act (No. 2) 1987 is hereby consequentially amended—

(a) By repealing section 5: 20

(b) By repealing so much of the Schedule to that Act as relates to section 116 of the principal Act.

## PART II

### AMENDMENTS TO CRIMES ACT 1961

**18. Part to be read with Crimes Act 1961**—This Part of this Act shall be read together with and deemed part of the Crimes Act 1961\* (in this Part referred to as the principal Act). 25

\*R.S. Vol. 1, p. 635

Amendments: 1979, No. 5; 1979, No. 127; 1980, No. 63; 1980, No. 85; 1982, No. 46; 1982, No. 157; 1985, No. 82; 1985, No. 121; 1985, No. 160; 1985, No. 171; 1986, No. 4; 1986, No. 33; 1986, No. 71; 1986, No. 75; 1986, No. 82; 1987, No. 1; 1987, No. 167; 1988, No. 114; 1989, Nos. 22, 103

**19. When bail not allowable**—The principal Act is hereby amended by repealing section 318, and substituting the following section: 30

“318. (1) No one who is charged with any crime against section 73 or section 76 of this Act (which relate to treason) or against section 78 of this Act (which relates to espionage) shall be granted bail except by order of the Governor-General or a Judge of the High Court. 35

“(2) No person to whom this subsection applies shall be granted bail or allowed to go at large unless that person satisfies the Court on the balance of probabilities that bail

should be granted, and, in particular (but without limiting any other matters in respect of which that person must satisfy the Court under this subsection), that the person will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person.

5       “(3) In deciding, in relation to any person to whom subsection (2) of this section applies, whether or not to grant bail to that person or allow that person to go at large, the Court shall have regard, among other matters, to the need to protect the public.

10       “(4) Subsection (2) of this section applies to any person (being a person who is of or over the age of 17 years) who is charged with or convicted of any specified offence (as defined in subsection (5) of this section) and who has 2 or more previous convictions for any specified offence (whether those convictions were for the same specified offence or for different specified offences).

15       “(5) In subsection (4) of this section, the term ‘specified offence’ means any offence against any of the following provisions of this Act:

20       “Section 128 (sexual violation):

      “Section 167 (murder):

      “Section 168 (murder):

      “Section 171 (manslaughter):

      “Section 173 (attempt to murder):

25       “Section 188 (1) (wounding with intent to cause grievous bodily harm):

      “Section 188 (2) (wounding with intent to injure):

      “Section 189 (1) (injuring with intent to cause grievous bodily harm):

30       “Section 189 (2) (injuring with intent to injure):

      “Section 198A (as inserted by section 3 of the Crimes Amendment Act (No. 2) 1986) (using any firearm against law enforcement officer, etc.):

35       “Section 198B (as so inserted) (commission of crime with firearm):

      “Section 234 (robbery):

      “Section 235 (aggravated robbery).”

20. **Arrest of absconder**—Section 320 of the principal Act is hereby amended by inserting, after the word “or” where it appears in that section for the last time, the words “, subject to section 318 of this Act,”.

**21. Variation of conditions of bail**—The principal Act is hereby amended by inserting, after section 320, the following section:

“320A. (1) Subject to **subsection (3)** of this section, where any person is granted bail by the High Court, any Judge of the High Court may, on the application of the prosecutor or the person granted bail, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail. 5

“(2) Subject to **subsection (3)** of this section, where the High Court has, in granting bail to any person, imposed the condition that the person report to the police at such time or times and at such place or places as the Court orders, any Registrar of the High Court or of a District Court may, on the application of the person granted bail, make an order varying the time or times or the place or places at which the person granted bail is required to so report. 10 15

“(3) No application shall be made under **subsection (1) or subsection (2)** of this section in respect of any bail bond that has been entered into in any case where sureties are required, unless the sureties to the bail bond have consented in writing to the making of the application. 20

“(4) Where, pursuant to **subsection (1)** of this section, any Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions shall apply: 25

“(a) If the person granted bail is present at the Court, the Registrar shall forthwith prepare a new bail bond setting out the conditions of bail as so amended (if any), satisfy himself or herself that the person granted bail understands the conditions of bail, and require that person to sign the bail bond: 30

“(b) If the person granted bail is not present at the Court, the Registrar of the Court that varied or revoked or substituted or imposed the condition shall send written notice to the person granted bail and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions as so amended (if any). 35

“(5) If, in any case to which **subsection (3)** of this section applies, the person granted bail fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the person granted bail.” 40 45

**22. Powers of Court of committal as to custody or bail of accused**—Section 323 of the principal Act is hereby amended by inserting, after the word “may”, the expression “, subject to sections 318 and 319 of this Act,”.

5     **23. Bench warrant**—Section 350 (2) of the principal Act is hereby amended by inserting, after the words “sittings or”, the words “, subject to section 318 of this Act,”.

10     **24. Motion in arrest of judgment. Sentence**—Section 371 (6) of the principal Act is hereby amended by inserting, immediately before the word “IF”, the words “Subject to section 318 of this Act,”.

**25. New heading and sections inserted**—The principal Act is hereby amended by inserting, after section 379A, the following heading and sections:

15                                     *“Appeal on Question of Bail*

**“379B. Appeal from decision of High Court relating to bail**—(1) Subject to subsections (4) and (5) of this section, this section applies to any decision made (whether pursuant to any enactment or rule of law or otherwise) by any Judge of the High Court whereby—

- 20                     “(a) Any person is granted or refused bail; or  
                       “(b) Any condition of bail is imposed or substituted or revoked or varied; or  
                       “(c) The imposition of any condition of bail, or any particular  
25                     condition of bail, is refused; or  
                       “(d) The variation or revocation of any condition of bail is refused.

          “(2) Either the prosecutor or the accused person may appeal to the Court of Appeal against any decision to which this section applies.

30                     “(3) For the purposes of this section, the failure of a Judge of the High Court to impose any condition of bail, or any particular condition of bail, on any occasion on which any such condition could lawfully have been imposed shall be deemed to  
35                     be a refusal to impose such a condition.

          “(4) Nothing in this section applies in respect of any decision made in any proceedings for a drug-dealing offence within the meaning of Part II of the Misuse of Drugs Amendment Act 1978.

40                     “(5) Nothing in this section applies in respect of any decision made by a Judge of the High Court if that decision was made



on appeal from any decision of a District Court Judge or Justice or Justices.

**“379C. Procedural provisions relating to appeal on question of bail—**(1) Every person wishing to appeal under **section 379B** of this Act shall file notice of that person’s intention to appeal with the Registrar of the Court of Appeal within 10 days after the date of the decision to be appealed against. 5

**“(2)** Every appeal under **section 379B** of this Act that is not heard before the date on which the decision appealed against ceases to be of any effect shall lapse on that date, and shall be deemed to have been dismissed by the Court of Appeal for non-prosecution. 10

**“(3)** No decision of a Judge appealed against under **section 379B** of this Act shall be suspended merely because notice of that appeal has been given. 15

**“(4)** On any appeal under **section 379B** of this Act the Court of Appeal may confirm the decision appealed against, or vary it, or set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place.

**“379D. Execution of decision of Court of Appeal—**(1) Where, on any appeal under **section 379B** of this Act against a refusal to grant bail to any person, the Court of Appeal determines that bail shall be granted, the Court of Appeal shall order that the person be released on bail, subject to such conditions as the Court of Appeal thinks fit. 20 25

**“(2)** Where, on an appeal under **section 379B** of this Act in respect of any condition of bail, the Court of Appeal cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against shall send written notice to the person bailed and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of Appeal’s decision. 30

**“(3)** If, in any case to which **subsection (2)** of this section applies, the person bailed fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the person bailed. 35 40

**“(4)** If, on an appeal under **section 379B** of this Act against a grant of bail, the Court of Appeal determines that bail shall not be granted or, as the case may be, should not be continued, a warrant for the detention in custody of the person to whom the

determination relates shall be issued out of the Court and signed by a Judge; and the person who executes that warrant shall ensure that a copy of the notice of the result of the appeal is given to the person arrested when the warrant is executed or  
5 as soon as practicable after the warrant is executed.

“(5) Any person to whom **subsection (4)** of this section applies and who is not in custody may be arrested without warrant by any constable or any officer of a penal institution.

10 “(6) For the purposes of giving full effect to any decision of the Court of Appeal under **section 379c** of this Act, the provisions of section 320 of this Act, so far as they are applicable and with all necessary modifications, shall apply.”

**26. Reserving question of the law**—Section 380 (5) of the principal Act is hereby amended by inserting, after the word  
15 “shall”, the words “, subject to section 318 of this Act,”.

**27. Powers of Court of Appeal where appeal is on question of law**—Section 382 (2) of the principal Act is hereby amended by inserting, after the expression “section 379A” (as inserted by section 8 (4) of the Crimes Amendment Act 1966),  
20 the expression “or **section 379B**”.

**28. Granting of bail to appellant, and custody pending appeal**—Section 397 (2) of the principal Act is hereby amended by inserting, immediately before the words “The Court of Appeal”, the words “Subject to section 318 of this  
25 Act,”.

**29. Intermediate effects of appeal**—Section 399 (6) of the principal Act is hereby amended—

(a) By inserting in the first sentence, immediately before the words “the Court may”, the words “, subject to  
30 section 318 of this Act,”:

(b) By inserting in the second sentence, immediately after the word “who”, the words “, subject to section 318 of this Act,”.

### PART III

35 AMENDMENTS TO DISTRICT COURTS ACT 1947

**30. Part to be read with District Courts Act 1947**—This Part of this Act shall be read together with and deemed part of

the District Courts Act 1947\* (in this Part referred to as the principal Act).

\*R.S. Vol. 5, p. 1

Amendments: 1980, No. 83; 1981, No. 21; 1982, No. 5; 1982, No. 130; 1983, No. 49; 1985, No. 137; 1986, No. 84; 1987, No. 26; 1988, No. 183; 1989, No. 107

**31. Powers of Court**—Section 28E of the principal Act (as inserted by section 9 of the District Courts Amendment Act 1980) is hereby amended by repealing subsection (2), and substituting the following subsections: 5

“(2) Any Court exercising jurisdiction under this Part of this Act may adjourn any trial and grant the accused person bail; and sections 46 to 50A, 53, 54, 55, and 57 of the Summary Proceedings Act 1957, with any necessary modifications, shall apply. 10

“(2A) Where, by virtue of subsection (2) of this section or of any of the provisions applied by that subsection, an accused person is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of sections 115D to 115F of the Summary Proceedings Act 1957, as far as they are applicable and with all necessary modifications, shall apply accordingly.” 15

**32. Consequential repeal**—Section 3 of the District Courts Amendment Act (No. 2) 1982 is hereby consequentially repealed. 20