No 339

House of Representatives

Supplementary Order Paper

Tuesday, 27 August 2013

Bail Amendment Bill

Proposed amendments

Hon Judith Collins, in Committee, to move the following amendments:

Clause 2
Replace *clause 2* (line 4 on page 4 to line 17 on page 6) with:

2   Commencement
This Act comes into force on the day after the date on which it receives the Royal assent.

Clause 4
In *clause 4(1)*, replace the new definition of **working day** (lines 1 to 6 on page 7) with:

"**working day** has the same meaning as in section 5 of the Criminal Procedure Act 2011

In *clause 4(3)*, definition of **electronic monitoring address**, after "Registrar" (line 17 on page 7), insert "or an EM assessor".

In *clause 4(3)*, insert after the new definition of **relevant occupant** (after line 29 on page 7):

"**temporary EM address** means an address approved by an EM assessor under **section 30MA**

Clause 10
Replace *clause 10* (lines 7 to 21 on page 10) with:

10   Section 16 replaced (Bail allowable for drug dealing offence only by order of Judge)
Replace section 16 with:

"**16   Judge only may grant bail for drug dealing offence**
A defendant who is charged with or convicted of a drug dealing offence may be granted bail by order of a High Court Judge or District Court Judge but not otherwise."

1

New clause 10A

After *clause 10* (after line 22 on page 10), insert:

**10A Section 17 repealed (Bail for drug dealing offence may be
continued or renewed by District Court)**

Repeal section 17.

Clause 17

Replace *new section 30E* (lines 1 to 3 on page 16) with:

"**30E Responsibility for management of EM bail**

"(1) The Minister of Justice, in consultation with the Minister of
Police and the Minister of Corrections, may, by notice in writ-
ing, nominate 1 or both of the following as the person or per-
sons responsible for the management of EM bail:

"(a) the Commissioner of Police:

"(b) the chief executive of the Department of Corrections.

"(2) The person or persons nominated under **subsection (1)** are
responsible for the management of EM bail and may authorise
their respective employees to act as EM assessors.

"(3) The Minister of Justice may make a nomination under **sub-
section (1)** from time to time, and, in consultation with the
Minister of Police and the Minister of Corrections, may revoke
a nomination by notice in writing to the person concerned."

In *clause 17*, *new section 30F*, replace subsection (1) (lines 5 to 7 on page 16)
with:

"(1) If a defendant applies under **section 30D** for bail with an
EM condition, the court or a Registrar may direct that an EM
assessor prepares an EM report in relation to the application
or, if satisfied that a previous EM report is sufficient, may
direct that the previous EM report be used in relation to the
application.

In *clause 17*, *new section 30H*, replace subsections (1) and (2) (lines 2 to 7 on
page 18) with:

"(1) The uses to which information obtained for the purpose of
preparing an EM report under **section 30F** (**EM informa-
tion**) may be put are the following:

"(a) use in the determination of the application to which the
report relates:

"(b) use in the preparation of a pre-sentence report under
section 26 of the Sentencing Act 2002 in relation to the
defendant:

"(c) any other use to which the defendant has consented.

"(2) EM information may not be used except in accordance with
subsection (1)."

In *clause 17*, *new section 30I(2)*, replace paragraph (a) (lines 29 and 30 on page 18) with:

> "(a) must consider the EM report or previous EM report re-ferred to in **section 30F(1)**; and

In *clause 17*, *new section 30L(1)(e)*, after "Police" (line 30 on page 19), insert "or an EM assessor".

In *clause 17*, *new section 30L(1)*, delete paragraph (h) (lines 1 to 4 on page 20).

In *clause 17*, after *new section 30M* (after line 21 on page 20), insert:

> "**30MA EM assessor may approve temporary EM address**
>
> "(1) If the EM address becomes unsuitable or unavailable through a change of circumstances (including the withdrawal of consent of a relevant occupant),—
>
> > "(a) an EM assessor may approve a temporary EM address; and
> >
> > "(b) within 5 working days after approving a temporary EM address, the EM assessor must make an application under **section 33(1)(b) or 34(1)(b)** for a variation of the EM address.
>
> "(2) **Subsection (1)(b)** does not apply if, within 5 working days after approval of the temporary EM address, the defendant makes an application under **section 33(1)(a) or 34(1)(a)** for a variation of the EM address.
>
> "(3) The defendant must remain at the temporary EM address pending the determination of the application for variation, and section **30L(1)(b) to (g), and (2)** apply as if the temporary EM address was the EM address.
>
> "(4) If, in the opinion of the EM assessor, there is no suitable tem-porary EM address available, the EM assessor must notify the Police and the defendant without delay, and the defendant must surrender himself or herself to Police custody.

Clause 19

In *clause 19(1)*, replace "**by the**" (line 5 on page 22) with "**imposed by the**".

Replace *clause 19(1A)* (line 6 on page 22) with:

> (1A) Replace section 33(1) with:
>
> "(1) If the proceeding for the offence with which the defendant has been charged is in a District Court, the court may,—
>
> > "(a) on the application of the defendant or the prosecutor, make an order varying or revoking any condition of bail or substituting any other condition of bail; and
> >
> > "(b) on the application of an EM assessor, make an order varying the EM address."

In *clause 19(2)*, *new section 33(1A)*,—

(a) replace "District Court" (line 9 on page 22) with "the court"; and

(b) replace "subsection (1)" (line 10 on page 22) with "subsection (1)(a)".

In *clause 19(2)*, *new section 33(1B)*, replace "District Court" (line 15 on page 22) with "the court".

After *clause 19(3)* (after line 18 on page 22), insert:

    (3A)   In section 33(4), replace "District Court" with "court".

Clause 20

Replace *clause 20(1A)* (lines 27 and 28 on page 22) with:

    (1A)   Replace section 34(1) with:

    "(1)   Subject to subsection (3), if a defendant is granted bail in any proceeding to which section 33(1) does not apply, a High Court judge may,—

        "(a)   on the application of the prosecutor or the defendant, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail; and

        "(b)   on the application of an EM assessor, make an order varying the EM address."

In *clause 20(2)*, *new section 34(1A)*, replace "subsection (1)" (line 32 on page 22) with "subsection (1)(a)".

Replace *clause 20(3)* (lines 5 to 7 on page 23) with:

    (3)   Replace section 34(2) with:

    "(2)   Subject to subsection (3), if a court or Registrar has, in granting bail to a defendant, imposed the condition that the defendant report to the Police at such times and at such place or places as the court or Registrar 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 report."

    (3A)   In section 34(4), replace "High Court" with "court" in each place.

Clause 21

In *clause 21*, *new section 34A(1)(a)*, after "EM address" (line 17 on page 23), insert "and no suitable temporary EM address is available".

Clause 22

After the heading to clause 22 (after line 31 on page 23), insert as subclause (1):

    (1)   In section 35(1), replace "the Supreme Court or the Court of Appeal or the High Court or a District Court" with "a court".

Clause 24A

In *clause 24A(2)*, *new section 37(7)(b)*, replace "judicial officer" (line 13 on page 25) with "Judge".

In *clause 24A(2)*, *new section 37(7)(c)*, replace "judicial officer" (line 16 on page 25) with "Judge".

Clause 24B

In *clause 24B(2)*, replace "the Registrar of the relevant court" (lines 22 and 23 on page 25) with "the Registrar".

Clause 25

Delete *clause 25* (lines 18 to 27 on page 27).

Clause 25A

Delete *clause 25A* (lines 28 to 30 on page 27).

Clause 25B

In *clause 25B*, replace *new section 73A(1) and (2)* (lines 2 to 10 on page 28) with:

"(1) Any warrant issued under this Act must be authenticated by the judicial officer or Registrar who issues the warrant.

"(2) The person who is required to authenticate a document (including a notice of bail or bail bond) under this Act does so—

"(a) by signing and dating the document; or

"(b) in the case of a document in electronic form, by any electronic means that adequately identifies that person and the date of authentication.

Clause 26

In *clause 26(3)*, *new section 214A(b)(i)*, replace "is in breach of" (line 7 on page 29) with "has breached".

In *clause 26(3)*, *new section 214A(b)(ii)*, replace "previously repeatedly" (lines 9 and 10 on page 29) with "on 2 or more previous occasions".

In *clause 26(4)*, *new section 235(1A)(b)*, replace "repeatedly breach a" (lines 37 and 38 on page 29) with "breach any".

Clause 28

Delete *clause 28* (lines 1 to 4 on page 31).

Clause 29

Replace *clause 29(2)* (lines 7 and 8 on page 31) with:

(2) Replace section 84C(2)(d) with:

"(d) if the judgment debtor cannot practically be brought immediately before a Judge or a Registrar, then a Police employee or bailiff may grant bail to the judgment debtor, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act."

Replace *clause 29(3)* (lines 9 and 10 on page 31) with:

(3) Replace section 84O(6)(c) with:

"(c) if the judgment debtor cannot practically be brought immediately before a Judge or a Registrar, then a Police employee or bailiff may grant bail to the judgment

debtor, and Parts 1 to 3 of the Bail Act 2000 apply, with
any necessary modifications, as if the bail were granted
by a Police employee under section 21(1) of that Act."

Clause 30

In *clause 30(2)*, *new section 84EA(5)(d)*, after "brought" (line 16 on page 31),
insert "immediately".

In *clause 30(3)*, replace "840B(3)(c)" (line 22 on page 31) with "840B(3)(e)".

In *clause 30(3)*, *new paragraph (c)*, replace "(c)" (line 24 on page 31) with "(e)".

In *clause 30(3)*, *new section 84OB(3)(e)*, delete "or relevant officer" in both
places (lines 24 and 27 on page 31).

In *clause 30(3)*, *new section 84OB(3)(e)*, after "brought" (line 25 on page 31),
insert "immediately".

New clause 32

After *clause 31* (after line 16 on page 32), insert:

32   Bail Rules 2000

The Bail Rules 2000 (SR 2000/248) are revoked.

Explanatory note

Broadly, this Supplementary Order Paper makes a number of technical amendments to the Bail Amendment Bill (the **Bill**) to align various provisions of the Bail Act 2000 with the new criminal procedure regime that came into force on 1 July 2013 with the commencement of the rest of the Criminal Procedure Act 2011. Leaving those changes aside, the most significant change made by this Supplementary Order Paper relates to the responsibility for the management of EM bail. Under the Bill as introduced, responsibility lay with the Police. Under *new section 30E* as substituted, responsibility may lie with the Police or Corrections, or both.