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BAIL ACT 1982

BAIL AMENDMENT REGULATIONS 2009

Bail Act 1982

Bail Amendment Regulations 2009

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Bail Amendment Regulations 2009*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Bail Amendment Act 2008* Part 2 comes into operation.

3. Regulations amended

These regulations amend the *Bail Regulations 1988*.

4. Regulations 4 and 5 deleted

Delete regulations 4 and 5.

5. Regulation 6 amended

- (1) In regulation 6(4) delete “Form 7” and insert:

The form referred to in section 30(2)(b) of the Act

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- (2) In regulation 6 delete the Table and insert:

Provision of Act	Table	Form
s. 11(3)	The form “certificate to authorise release” at the foot of the duplicate of Form 6	
s. 28(2)	Form 6 (bail undertaking)	
s. 37(1)(a)	Form 8 Part A (notice to surety as to terms of bail)	
s. 37(1)(c)	Form 8 Part B (declaration by proposed surety)	
s. 50F(5)	Form 11 (warrant to arrest)	

6. Regulation 7 replaced

Delete regulation 7 and insert:

7A. Notice under s. 13A(3) of the Act to be sent to court before which accused to appear

If under section 7A of the Act a judicial officer dispenses with the requirement for bail for an appearance by an accused, the judicial officer must ensure that a copy of the notice given to the accused under section 13A(3) of the Act is sent as soon as is practicable to the court before which the accused is required to appear.

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r. 6**7. Relevant papers prescribed for s. 27 of the Act**

- (1) For the purposes of the definition of *the relevant papers* in section 27(2) of the Act —
 - (a) the following papers are to be sent by an authorised officer or a judicial officer who considers the accused's case for bail —
 - (i) the form referred to in section 8(1)(b) of the Act;
 - (ii) if section 26(1) of the Act applies — the bail record form;
 - (b) the following papers are to be sent by a person before whom a bail undertaking has been entered into —
 - (i) the bail undertaking entered into;
 - (ii) any passbook or document deposited and any document completed by the accused pursuant to a condition imposed under Schedule 1 Part D clause 1(2)(d) or (e) of the Act;
 - (c) the following papers are to be sent by a person before whom a surety undertaking is entered into —
 - (i) Form 8 in relation to the surety;
 - (ii) any passbook or document deposited and any document completed by the accused pursuant to a condition imposed under Schedule 1 Part D clause 1(2)(d) or (e) of the Act.
- (2) Subregulation (1) does not apply —
 - (a) if the papers concerned are completed or deposited at the court before which the accused is required to appear; or

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- (b) in circumstances involving a committal to the Supreme Court or District Court or a change of venue of any proceedings, if the papers concerned are in the custody of the court from which the committal is made or the venue is changed.

7. Regulation 8 replaced

Delete regulation 8 and insert:

8. Notice of application for approval as a surety

- (1) This regulation applies if an order is made under section 36(2)(a) of the Act requiring notice of an application for approval as a surety to be given to the prosecutor, except to the extent that the order provides differently.
- (2) The surety approval officer must give, or cause to be given, to the prosecutor notice of the application including the name, date of birth, address and occupation of the applicant.
- (3) If the prosecutor wishes to make representations to the surety approval officer as to the suitability of the applicant, the prosecutor must make those representations as soon as possible and, in any event, within 24 hours after receiving notice of the application.
- (4) Notice of the application may be given, and any representations under subregulation (3) may be made, orally or in writing.

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- (5) If the prosecutor is a police officer it is sufficient compliance with subregulation (2) for notice of the application to be given to —
 - (a) a police officer having knowledge of the accused's case; or
 - (b) the officer in charge of the police station or lock-up closest to the place where the surety approval officer is performing his or her duties.

9A. Application for cancellation of surety undertaking — court of summary jurisdiction

- (1) This regulation applies to an application under section 48(1) of the Act for the cancellation of a surety undertaking if the application is made in a court of summary jurisdiction.
- (2) The application may be made orally unless the court orders otherwise.
- (3) If the application is not made orally —
 - (a) the application must be made in an approved form; and
 - (b) the application does not have to be supported by an affidavit, unless the court orders otherwise; and
 - (c) the application and any affidavit in support of it must be served on each other party, and any other person affected by the application, as soon as practicable after they are lodged with the court and in accordance with any order of the court as to time for service.

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9B. Application for forfeiture of amount in surety undertaking — court of summary jurisdiction

- (1) This regulation applies to an application under section 49(1) of the Act for the forfeiture of the amount specified in a surety undertaking if the application is made in a court of summary jurisdiction.
- (2) The application must be made in an approved form.
- (3) The application does not have to be supported by an affidavit, unless the court orders otherwise.
- (4) The application and any affidavit in support of it must be served on each other party, and any other person affected by the application, as soon as practicable after they are lodged with the court and in any event at least 14 clear working days before the hearing date for the application, unless the court orders otherwise.

8. Regulation 9 amended

In regulation 9:

- (a) delete “A defendant” and insert:

An accused

- (b) delete “chief executive officer of corrective services” and insert:

CEO (corrections)

- (c) delete “defendant” (second occurrence) and insert:

accused

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- (1) In regulation 11(1)(a):
- (a) delete “registered”;
 - (b) delete “*Psychologists Registration Act 1976*” and insert:

Psychologists Act 2005

- (2) In regulation 11(3) in the definition of **department** delete “of which the CEO (Justice) is the chief executive officer;” and insert:

principally assisting in the administration of the Act;

10. Schedule amended

- (1) In the Schedule Form 1:
- (a) in the heading delete “**DEFENDANT**” and insert:

ACCUSED

- (b) delete “*a defendant*” and insert:

an accused

- (c) in clause 2 delete “(Form 2)” and insert:

(Information Given by Accused)

- (d) in clause 3 delete “or wilful murder” (each occurrence);

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- (e) in clause 3 delete “Justice of the Peace” and insert:

justice

- (f) in clause 4 delete “or wilful murder”;
(g) in clause 4 delete “Supreme Court Judge” and insert:

judge of the Supreme Court

- (h) after clause 4(b) insert:

If you are in custody during a trial that extends beyond one day, a judicial officer need not consider your case for bail, however, you may apply for bail.

- (i) in clause 5 delete “Justice of the Peace” and insert:

justice

- (j) delete clause 6 and insert:

6. Where charge is murder

If you are an adult charged with murder, an application for bail may be made by you or on your behalf to a judge of the Supreme Court.

If you are a child charged with murder, you are to be taken before a judge of the Children’s Court as soon as is practicable for consideration of bail, whether or not an application for bail is made by you or on your behalf.

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- (k) in clause 8 delete “defendant,” and insert:
- accused,
- (l) in clause 8 delete “paragraph” (each occurrence) and insert:
- clause
- (m) in clause 8A delete “paragraph” (each occurrence) and insert:
- clause
- (n) in clause 8B delete “Bail Act” and insert:
- Bail Act 1982*
- (o) in clause 9(c) delete “a Court of Petty Sessions” and insert:
- the Magistrates Court
- (p) in clause 9(c) delete “is to be granted only in exceptional cases or where there is a strong likelihood that the sentence will not be one of imprisonment.” and insert:
- may be granted at the discretion of an appropriate judicial officer.
- (q) in clause 10 delete “defendant” (each occurrence) and insert:
- accused

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- (r) in the heading to clause 11 delete “**Defendant**” and insert:

Accused

- (s) in clause 11 delete “Justice of the Peace,” and insert:

justice,

- (t) after clause 11(a) insert:

or

- (u) after clause 11(b) insert:

- (ca) you have been granted bail for a serious offence while on bail for another serious offence; or

- (v) in clause 11 delete “Magistrate or a Judge” and insert:

magistrate or a judge

- (w) in clause 12 delete “Justice” and insert:

justice

- (x) in clause 13 delete “fingerprints or photographs.” and insert:

fingerprints, photographs or DNA profile.

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(y) delete clauses 14 and 15 and insert:

14. Reconsideration of decision

If, after arrest, a police officer (or, in the case of a child, a community services officer) refuses bail, you can ask a justice to consider bail. However, if a justice refuses bail before your initial appearance in court, another justice cannot grant bail.

If on or after your initial appearance in court bail is refused, you may re-apply for bail only if you think that new facts have arisen, circumstances have changed or you did not present your case adequately.

15. Application to judge

If dissatisfied with a bail decision of an authorised officer, justice or magistrate, you may make an application to a judge to exercise the power to grant bail. However once you have made such an application you cannot make another unless —

- (a) new facts have been discovered or there has been a change of circumstances; or
- (b) you failed to present your case adequately on the first application.

(2) Delete the Schedule Forms 2, 3, 4 and 5.

(3) In the Schedule Form 6:

(a) delete “Name and address” (each occurrence) and insert:

Details

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- (b) delete “Address:.....” (each occurrence) and insert:

Date of birth:
 Address:
 Telephone No: Fax No:
 Email address:

- (c) delete “2. Charge(s)” (each occurrence) and insert:

Charge(s)

- (d) delete paragraph (c) (each occurrence) and insert:

- (c) that if I fail to appear in court as required I will as soon as is practicable appear at the court when it is sitting;

- (e) delete “of form 7” (each occurrence) and insert:

the form *Notice to Accused*

- (f) delete “section 11(2)” and insert:

section 11(3)

- (g) delete “subsection (1) of that section.” and insert:

section 11(1) of the Act.

- (h) delete “defendant” (each occurrence) and insert:

accused

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(i) delete “DEFENDANT” (each occurrence) and insert:

ACCUSED

(j) delete “DEFENDANT” and insert:

ACCUSED

(4) Delete the Schedule Form 7.

(5) In the Schedule Form 8:

(a) in Part A delete “DEFENDANT” (each occurrence) and insert:

ACCUSED

(b) at the end of Part A delete “JUDICIAL OFFICER/AUTHORISED OFFICER/OFFICER AUTHORISED UNDER SEC 36(2) OF THE ACT.” and insert:

SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER

(c) delete Part B items 1, 2, 3 and 4 and insert:

1. Proposed surety
.....
Surname Other names
2. Date of birth
3. Occupation
- Employer details
4. Address
- Telephone No Fax No.....
- Email address

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(d) in Part B item 5 delete “defendant” (each occurrence) and insert:

accused

(e) delete Part B item 6 and insert:

6. Financial position

<i>Assets</i>	<i>Value (\$)</i>
Real estate (address)
.....
.....
Vehicle(s) (make, model and reg. no.)
.....
.....
Electrical equipment (TV, stereo, DVD, etc.)
.....
.....
Furniture (excluding white goods)
.....
.....
Bank accounts
.....
.....
Shares
.....
.....
Other (please state)
.....
.....
<i>Liabilities</i>	<i>Value (\$)</i>
Mortgage(s) (specify financial institution)
.....
.....

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Fines (including fines registered with the Fines Enforcement Registry)

.....

.....

Credit cards

.....

.....

Loans

.....

.....

Other (please state)

.....

.....

- (f) in Part B item 7 delete “(a)”;
- (g) in Part B item 8 delete “(a)”;
- (h) in Part B item 9 delete “defendant’s” and insert:

accused’s

- (i) in Part B item 9 before “* show which” insert:

- (c) I do/do not* agree to my obligations as a surety being extended to a different time substituted during trial.

- (j) at the end of Part B delete “Judicial Officer”, “Authorised Officer” and “Officer authorised under section 36(2) of the Act.” and insert:

Signature and designation of surety approval officer

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(k) in Part C paragraph (c) delete “sitting.” and insert:

sitting; or

(l) after Part C paragraph (c) insert:

(3A) Delete (d) if
surety's obligations
are not to cover this

(d) fails to appear at a different time substituted
during his trial ^(3A).

*Under section 44(4) of the Act the undertaking in (d)
applies despite an amendment to the bail conditions
if a statement that the amendment is of a minor
nature has been made under section 31A(4) of the
Act.*

(m) in Part C delete “section 11(2)” and insert:

section 11(3)

(n) in Part C delete “defendant” (each occurrence) and insert:

accused

(6) In the Schedule Form 9:

(a) in clause 2 delete “a defendant” and insert:

an accused

(b) in clause 2 delete “defendant” (second and third
occurrences) and insert:

accused

(c) in the heading to clause 10 delete “, etc.”;

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- (d) in clause 10 delete “of the surety’s place of residence, employment or business.” and insert:
- to the surety’s residential address.
- (e) in clause 10 after “fine of” insert:
- up to
- (f) in clause 11 delete “a police officer in writing and the police officer” and insert:
- the prosecutor or a police officer in writing and that person
- (g) in clause 13 delete “a defendant” and insert:
- an accused
- (h) in clause 13 delete “defendant” (second occurrence) and insert:
- accused
- (i) in clause 15 delete “A” and insert:
- The prosecutor or a
- (j) except in clauses 2 and 13, delete “defendant” (each occurrence) and insert:
- accused

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(k) delete “**Defendant**” (each occurrence) and insert:

Accused

(l) delete “defendant’s” (each occurrence) and insert:

accused’s

(7) Delete the Schedule Form 10.

(8) In the Schedule Form 11:

(a) in the heading delete “**DEFENDANT**” and insert:

ACCUSED

(b) delete “defendant” (each occurrence) and insert:

accused

(c) delete “chief executive officer of corrective services” and insert:

CEO (corrections)

(9) Delete the Schedule Form 12.

By Command of the Governor,

P. CONRAN, Clerk of the Executive Council.