

The Bail (Bailiwick of Guernsey) Rules, 2004

THE ROYAL COURT, in exercise of the powers conferred upon it by sections 8, 9, 12(5) and 14(4) of, and the Schedule to, the Bail (Bailiwick of Guernsey) Law, 2003^a, and section 94 of the Police Powers and Criminal Procedure (Bailiwick of Guernsey) Law, 2003^b, and all other powers enabling it in that behalf, hereby orders: -

GENERAL

Interpretation.

1. (1) In these Rules -

"**Bail Law**" means the Bail (Bailiwick of Guernsey) Law, 2003,

"**clerk of the court**" means -

- (a) in relation to the Court of Alderney, the Clerk of the Court of Alderney,
- (b) in relation to the Court of the Seneschal of Sark, the Greffier of Sark,
- (c) in relation to any other court, the Greffier,

^a Order in Council No. XVII of 2003.

^b Order in Council No. XXIII of 2003.

"Form 1, 2 or 3" means the Form so numbered in the Schedule to these Rules, or a form to like effect,

"governor of the prison" includes the person responsible for any other place of detention where the person concerned is being held,

"Greffier" means Her Majesty's Greffier,

"in chambers" means otherwise than in open court,

"prison" includes any other place of detention where the person concerned is being held,

"prosecutor" means Her Majesty's Procureur and includes any person acting on behalf of Her Majesty's Procureur in a prosecution,

"summary court" means the Magistrate's Court, the Court of Alderney, the Court of the Seneschal of Sark and the Royal Court sitting as an Ordinary Court and exercising its summary jurisdiction,

"Police Powers Law" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003,

and other expressions have the same meaning as in the Bail Law.

(2) In reckoning any period of 72 hours for the purpose of Rule 8(4) or 9(4), no account shall be taken of Christmas Day, Good Friday, any public holiday or any Sunday.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of these Rules.

Records of bail decisions.

2. (1) A record of a bail decision made by a court shall include -
- (a) any note of reasons required under paragraphs 4 and 6 of the Schedule to the Bail Law, and
 - (b) the particulars set out in any certificate granted under paragraph 9 of that Schedule.

(2) A note of the record of the bail decision shall contain the particulars set out in Form 1, and a copy of the note shall be given to the defendant.

SUMMARY PROCEEDINGS

Notes of argument in bail hearings.

3. Where the court hears full argument as to bail, the clerk of the court shall make a note to that effect.

Notice of change of time for appearance, further remand and recognisance.

4. Where -
- (a) a person has been granted bail by a police officer subject to a duty to appear before the summary court, and the court appoints a later time at which he is to appear, or

^c Ordres en Conseil Vol. XIII, p. 355.

- (b) the summary court further remands a person on bail, or enlarges the recognisance of any surety for him, in his absence,

it shall give notice thereof to his Advocate or, if no Advocate is acting, to him and his sureties (if any).

Directions as to requirements before release.

5. Where the summary court imposes a requirement to be complied with before a person's release on bail, the court may give directions as to the manner in which and the persons before whom the requirement may be complied with.

Release when requirements complied with or recognisances taken.

6. Where the summary court, with a view to the release on bail of a person in custody -

- (a) fixes the amount in which he or any surety of his shall be bound, or
- (b) imposes any requirement to be complied with before his release,

and gives notice thereof in accordance with these Rules to the governor of the prison, the governor shall, when satisfied that the recognisances of all sureties have been taken and that all such requirements have been complied with, release that person, unless he is in custody for another reason.

Notification of bail decision after arrest whilst on bail.

7. Where a person released on bail is arrested and brought before the nearest available summary court under section 17(3) of the Bail Law, that court shall send a copy of the record of the bail decision made in respect of him to the clerk of the court which originally granted bail.

Procedure on reconsideration of a decision to grant bail.

8. (1) The appropriate court for the purposes of section 9 of the Bail Law in relation to a decision of a police officer to grant bail is the court appointed by the custody officer as being the court before which the person on bail must appear.

(2) An application under section 9 of the Bail Law to reconsider a decision to grant bail shall -

- (a) be made in writing,
- (b) contain a statement of the grounds on which it is made,
- (c) specify the offence with which the proceedings in which bail was granted were connected,
- (d) specify the decision to be reconsidered (including any conditions of bail and the reasons for imposing them), and
- (e) specify the name and address of any surety provided by the person on bail.

(3) The clerk of the court to which such an application is made shall -

- (a) fix a date, time and place for the hearing of the application,
- (b) give notice of the application and of the date, time and place so fixed to the person on bail, and
- (c) send a copy of the notice to the applicant and to any surety.

(4) The time fixed for the hearing shall be not later than 72 hours after the receipt of the application.

(5) Service of a notice to be given or sent to any person under paragraph (3) may be effected by delivering it to him or his Advocate personally.

(6) At the hearing of the application, the court shall consider any representations made by the person on bail (whether in writing or orally) before making any decision under section 9 of the Bail Law; and, where the person on bail does not appear, the court shall not make any such decision unless satisfied that the notice required to be given under paragraph (3) was served on him before the hearing.

(7) Where the court proceeds in the absence of the person on bail, and the decision of the court is to vary or impose conditions of bail, the clerk of the court shall notify the person on bail accordingly.

(8) Service of the notice referred to in paragraph (7) may be effected by delivering it to the person on bail (or his Advocate) or by leaving it for him with some person at his usual or last known place of abode.

Procedure on application for review following grant of conditional police bail.

9. (1) An application under section 55(8) of the Police Powers Law shall -

- (a) be made in writing,
- (b) contain a statement of the grounds upon which it is made,
- (c) specify the offence with which the applicant was charged before his release on bail,
- (d) specify, or be accompanied by a copy of the note of, the reasons given by the custody officer for imposing or varying the conditions of bail, and
- (e) specify the name and address of any surety provided by the applicant.

(2) Any such application shall be sent to the clerk of the summary court appointed by the custody officer as being the court before which the applicant must appear and a copy of the application shall be sent to the custody officer who imposed or varied the conditions of bail.

(3) The clerk of the court to whom such an application is sent shall send a notice in writing of the date, time and place fixed for the hearing of the application to -

- (a) the applicant,
- (b) the prosecutor, and
- (c) any surety.

(4) The time fixed for the hearing shall be not later than 72 hours after the receipt of the application.

(5) If the court hearing the application discharges or enlarges any recognizance entered into by any surety or increases or reduces the amount in which that person is bound, the clerk of the court shall forthwith give notice thereof to the applicant and to the surety.

Procedure where the prosecutor appeals against a decision to grant bail.

10. (1) Where the prosecutor wishes to exercise the right of appeal to the Royal Court under section 15 of the Bail Law against a decision to grant bail, oral notice of appeal must be given to the clerk of the court and to the person concerned at the conclusion of the proceedings in which bail was granted and before the release of the person concerned.

(2) When oral notice of appeal is given, the clerk of the court shall announce in open court the time at which such notice was given.

(3) A record of the prosecutor's decision to appeal and the time at which oral notice of appeal was given shall contain the particulars set out in Form 2.

(4) Where oral notice of appeal is given the court shall remand the person concerned in custody until the appeal is determined or otherwise disposed of.

(5) If, having given oral notice of appeal, the prosecutor fails to serve a written notice of appeal within the two hour period referred to in section 15(6) of the Bail Law, the clerk of the court shall, as soon as practicable, by way of written notice to the persons in whose custody the person concerned is, direct the release of the person concerned on bail as granted by the summary court and subject to any conditions which it imposed.

(6) A record of receipt of written notice of appeal shall be made in the same manner as that of oral notice of appeal under paragraph (3).

(7) If the prosecutor serves notice of abandonment of appeal on the clerk of the court, the clerk shall forthwith, by written notice to the governor of the prison, direct the release on bail of the person concerned as granted by the summary court and subject to any conditions which it imposed.

(8) The clerk of the court shall record the prosecutor's failure to serve a written notice of appeal or the service of a notice of abandonment.

(9) Where a written notice of appeal is served on the clerk of the summary court, he shall provide as soon as practicable to the Greffier a copy of that written notice, together with -

- (a) the notes of argument made under Rule 3 of these Rules, and
- (b) a note of the date when the person concerned is next due to appear in the summary court, whether he is released on bail or remanded in custody by the Royal Court.

ROYAL COURT PROCEDURE

Applications to Royal Court relating to bail.

11. (1) This Rule applies where an application to the Royal Court relating to bail is made otherwise than during the hearing of proceedings in the Royal Court.

(2) For the purposes of this Rule, the Royal Court shall be constituted by the Bailiff sitting alone, and the hearing shall be in chambers unless the Bailiff directs otherwise.

(3) Notice in writing of an application described in paragraph (1) shall, at least 24 hours before the application is made, be given to the prosecutor or, if the application is to be made by the prosecutor, to the person on bail.

(4) On receiving notice under paragraph (3), the prosecutor or, as the case may be, the person on bail shall -

- (a) notify the Greffier and the applicant that he wishes to attend the hearing of the application,

- (b) notify the Greffier and the applicant that he does not oppose the application, or
- (c) give to the Greffier, for the consideration of the Bailiff, a written statement of his reasons for opposing the application, and send a copy of the statement to the applicant.

(5) A notice under paragraph (3) shall contain the particulars prescribed in Form 3, and the applicant shall give a copy of the notice to the Greffier.

(6) Except in the case of an application made by the prosecutor, the applicant may not be present on the hearing of his application unless the Royal Court gives him leave to be present.

(7) A record of a bail decision made by the Royal Court (together with any note of reasons required by paragraphs 4 and 6 of the Schedule to the Bail Law) shall include the following particulars -

- (a) the effect of the decision,
- (b) a statement of any condition imposed in respect of bail, indicating whether it is to be complied with before or after release on bail,
- (c) where conditions of bail are varied, a statement of the conditions as varied,

- (d) where bail is withheld, a statement of the relevant exception to the right to bail (as provided in sections 4 and 5 of the Bail Law) on which the decision is based.

Supplementary provisions about bail applications in the Royal Court.

12. (1) Every person who makes an application to the Royal Court relating to bail shall inform the Court of any earlier application to the Royal Court relating to bail in the course of the same proceedings.

(2) Where the Royal Court grants bail, the recognizance of any surety required as a condition of bail may be entered into before the Greffier or, where the person granted bail is in prison, before the governor of the prison as well as before the persons specified in section 12(4) of the Bail Law.

(3) Where the Royal Court imposes a requirement to be complied with before a person's release on bail, the Court may give directions as to the manner in which and the persons before whom the requirement may be complied with.

(4) Where in pursuance of an order of the Royal Court a recognizance is entered into, or any requirement to be complied with before a person's release on bail is complied with, before any person, that person shall forthwith -

- (a) transmit the recognizance or, as the case may be, a statement of compliance with the requirement to the Greffier, and
- (b) send a copy of the recognizance or statement to the governor of the prison where the person named in the

order is detained, unless the recognizance was entered into or the requirement was complied with before the governor.

(5) Where security is given in respect of a person granted bail with a duty to surrender to the custody of the Royal Court and -

- (a) that person surrenders to the custody of the Court, or
- (b) that person fails to surrender to the custody of the Court, but the Court decides not to order the forfeiture of the security,

the Greffier shall as soon as practicable give notice of the surrender to custody or, as the case may be, of the decision not to forfeit the security to the person before whom the security was given.

Procedure for prosecution appeals in the Royal Court.

13. (1) This rule applies where the prosecutor appeals under section 15 of the Bail Law against a decision of the summary court to grant bail.

(2) The written notice of appeal required by section 15(4) of the Bail Law shall contain the particulars prescribed in Form 2 and shall be served on -

- (a) the clerk of the summary court, and
- (b) the person concerned.

(3) The Greffier shall enter the appeal and give notice of the date, time and place of the hearing to -

- (a) the prosecutor,
- (b) the person concerned, and
- (c) the clerk of the summary court.

(4) The person concerned may not be present at the hearing of the appeal unless he is acting in person or, in any other case of an exceptional nature, the Bailiff is of the opinion that the interests of justice require him to be present and gives him leave to be so.

(5) At any time after the service of written notice of appeal under paragraph (2), the prosecutor may abandon the appeal by giving notice in writing.

(6) The notice of abandonment required under paragraph (5) shall be served on -

- (a) the person concerned,
- (b) the clerk of the summary court, and
- (c) the Greffier.

(7) A record of a decision on an appeal described in paragraph (1) (together with any note of reasons required by paragraphs 4 and 6 of the Schedule to the Bail Law) shall be made by way of an entry in the file relating to the case in question and shall include the following particulars -

- (a) the effect of the decision,

- (b) a statement of any condition imposed in respect of bail, indicating whether it is to be complied with before or after release on bail,
- (c) where conditions of bail are varied, a statement of the conditions as varied,
- (d) where bail is withheld, a statement of the relevant exception to the right to bail (as set out in sections 4 and 5 of the Bail Law) on which the decision is based.

(8) The Greffier shall, as soon as practicable after the hearing of the appeal, give notice of the decision and of the matters required to be recorded by paragraph (7) to -

- (a) the person concerned,
- (b) the prosecutor,
- (c) the clerk of the summary court, and
- (d) the governor of the prison where the person concerned is being held.

(9) In addition to any other permitted method of service, the notice required by paragraph (3) may be given by telephone.

(10) In this Rule "the person concerned" means the person granted bail in the circumstances set out in section 15 of the Bail Law.

Forfeit of recognisance.

14. (1) Where recognisance is entered into in respect of a person granted bail to appear before the Royal Court and it appears to the Court that a default has been made in performing the conditions of the recognisance, the Court may order the recognisance to be forfeited.

(2) Where the Royal Court is to hear an application for an order for a recognisance to be forfeited, the Greffier shall give notice of the application to the person by whom the recognisance was entered into indicating the date, time and place of the hearing; and no such order shall be made before the expiry of seven days after the day on which the notice was given.

Service of documents.

15. (1) Any document to be given, sent or served under these Rules may be served on -

- (a) an individual, other than one mentioned in subparagraph (b) -
 - (i) by being delivered to him,
 - (ii) by being left at, or sent by post to, his usual or last known place of abode,
 - (iii) by being delivered to his Advocate, or
 - (iv) by being left at, or sent by post to, his Advocate's office,

(b) an officer of the court, the prosecutor, a police officer or custody officer or the governor of the prison -

(i) by being delivered to him, or

(ii) by being left at, or sent by post to, his office,

and in this Rule the expression "by post" means by ordinary letter post, facsimile transmission or electronic mail.

(2) Paragraph (1) -

(a) is without prejudice to any other lawful method of service, and

(b) does not apply where any other provision of these Rules requires service to be effected in a particular manner.

(3) Notwithstanding the provisions of paragraphs (1) and (2) and of any other rule of law in relation to the service of documents, no document to be served on a person mentioned in paragraph (1)(b) shall be deemed to have been served until it is received.

Citation.

16. These Rules may be cited as the Bail (Bailiwick of Guernsey) Rules, 2004.

Commencement.

17. These Rules shall come into force on the 5th April, 2004.

SCHEDULE

Rule 2

FORM 1

Bail (Bailiwick of Guernsey) Law, 2003: Bail (Bailiwick of Guernsey) Rules, 2004)

Name of ACCUSED :	D of B	Date:
Alleged OFFENCES :		Court:
		Ref:

DATE AND PLACE OF NEXT APPEARANCE :-

	BAIL IS GRANTED The Accused is remanded on unconditional /conditional bail to appear as specified above
CONDITIONS (Specify below)	REASONS for imposing conditions (√):-
	<input type="checkbox"/> Ensure Accused surrenders to custody
	<input type="checkbox"/> Ensure Accused does not commit offence whilst on bail
	<input type="checkbox"/> Ensure Accused does not interfere with witnesses or obstruct course of justice
	<input type="checkbox"/> Ensure Accused is available to enable inquiries/report to be made for court

	BAIL IS WITHHELD The Accused is remanded in custody to appear as specified above
GROUND FOR WITHHOLDING BAIL (√)	REASONS FOR APPLYING GROUNDS (√)
Substantial grounds for belief Accused would fail to surrender to custody (<i>imprisonable offences</i>)	Nature and seriousness of offence and probable consequences
Substantial grounds for belief Accused would fail to surrender to custody and previous failure to answer bail (<i>non imprisonable offences</i>)	Character/antecedents/associations/lack of community ties of Accused
Substantial grounds for belief Accused would commit an offence on bail	Record of Accused when on bail previously
Substantial grounds for belief Accused would interfere with witnesses or obstruct course of justice	Strength of evidence against Accused
For Accused's own protection or welfare	Other:-
Accused is serving custodial sentence	
Impracticable to obtain sufficient information to take decision	
Accused convicted and impracticable to complete inquiries	

CERTIFICATE AS TO HEARING OF FULL ARGUMENT FOR BAIL

The Court heard full argument before refusing bail. The Court has [not] previously heard full argument (but is satisfied that the following [change(s) in circumstances] [new considerations] have been placed before it):

Officer of the Court (present during the proceedings)

Name of ACCUSED :	D of B
Alleged OFFENCES :	

Date:
Court:
Ref:

DATE AND PLACE OF NEXT APPEARANCE :-

BAIL IS GRANTED The Accused is remanded on unconditional /conditional bail to appear as specified above

CONDITIONS (Specify below)

REASONS for imposing conditions (✓):-

- | |
|--|
| Ensure Accused surrenders to custody |
| Ensure Accused does not commit offence whilst on bail |
| Ensure Accused does not interfere with witnesses or obstruct course of justice |
| Ensure Accused is available to enable inquiries/report to be made for court |

BAIL IS WITHHELD The Accused is remanded in custody to appear as specified above

GROUND FOR WITHHOLDING BAIL (✓)

REASONS FOR APPLYING GROUNDS (✓)

Substantial grounds for belief Accused would fail to surrender to custody (<i>imprisonable offences</i>)		Nature and seriousness of offence and probable consequences	
Substantial grounds for belief Accused would fail to surrender to custody and previous failure to answer bail (<i>non imprisonable offences</i>)		Character/antecedents/associations/lack of community ties of Accused	
Substantial grounds for belief Accused would commit an offence on bail		Record of Accused when on bail previously	
Substantial grounds for belief Accused would interfere with witnesses or obstruct course of justice		Strength of evidence against Accused	
For Accused's own protection or welfare		Other:-	
Accused is serving custodial sentence			
Impracticable to obtain sufficient information to take decision			
Accused convicted and impracticable to complete inquiries			

CERTIFICATE AS TO HEARING OF FULL ARGUMENT FOR BAIL

The Court heard full argument before refusing bail. The Court has [not] previously heard full argument (but is satisfied that the following [change(s) in circumstances] [new considerations] have been placed before it):

Officer of the Court (present during the proceedings)

FORM 2

Rule 10

(Bail (Bailiwick of Guernsey) Law, 2003: Bail (Bailiwick of Guernsey) Rules, 2004)

Record of prosecution decision to appeal against the granting of bail

Court:

Date:

Accused:

Date of Birth:

Alleged offence(s):

Date and time oral notice

of appeal given:.....Onat.....am/pm

* Prosecutor failed to serve written notice (or)

Date and time written notice

of appeal served.....On.....at.....am/pm

The Prosecutor did/did not* serve notice of abandonment of appeal.

Signature

(Greffier/Clerk of the court)

**Delete as applicable*

FORM 3

Rule 11

(Bail (Bailiwick of Guernsey) Law, 2003: Bail (Bailiwick of Guernsey) Rules, 2004)

Notice of application to the Royal Court relating to bail

Particulars of Applicant:

Name: (Date of birth)*

Address: (In custody / on bail)*

Alleged offence(s):

If bail granted, state any conditions currently attached:

Briefly state reasons for application, including the following information:

Whether plea entered/intended plea-

Proposed Sureties:

Name:

Address:

Occupation:

£

Proposed Conditions of Bail:

If legally represented, name of Advocate:

..... (Signature of Applicant)

..... (Date)

**Delete as applicable*