

CONSTITUTIONAL INSTRUMENT

Supplement to the Sierra Leone Extra Ordinary Gazette Vol. CXLVIII, No. 85

dated 1st December, 2017

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THE BAIL REGULATIONS, 2017

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CONSTITUTIONAL INSTRUMENT No. 161 OF 2017

Published 1st December, 2017

*THE CONSTITUTION OF SIERRA LEONE, 1991
(ACT NO. 6 OF 1991)*

Short title.

BAIL REGULATIONS, 2017

IN EXERCISE of the powers conferred on it by subsection (2) of section 145 of the Constitution of Sierra Leone, 1991, the Rules of Court Committee hereby makes the following Regulations—

PART – I PRELIMINARY

Interpretation.

1. In these Regulations unless the context otherwise requires—

“Act” means the Criminal Procedure Act, 1965;

“bail” means an agreement between a defendant, his surety and the Court or a defendant and the Court, that the defendant will attend Court as and when required and if he fails to attend Court, a sum of money deposited into the Court or property put up as security shall be forfeited to the Court in addition to the Court issuing a bench warrant;

“bail report” means a document used by the Court to assess-

- (a) the likelihood of the defendant appearing for trial; and
- (b) bail conditions to be imposed;

“child” means a person under the age of eighteen years;

“Court” includes a Judge of the Superior Court of Judicature or a Magistrate or Justice of the Peace,

vested with powers to act in connection with proceedings before that Court;

“defendant” means a person charged with an offence;

“primary caregiver” means a person who bears primary responsibility for a child;

“security” includes a sum of money or any security document as specified in regulation 12 pledged in exchange for the release of a defendant as a guarantee of the defendant’s appearance for trial;

“surety” means a person who undertakes to ensure that a defendant appears in Court and complies with bail conditions.

2. (1) Bail shall be granted in accordance with section 79 of the Act. Entitlement to bail.

(2) An application for bail shall be dealt with by the Court or the issue of bail shall be considered on each occasion a defendant appears before a Court in relation to the relevant offence charged.

3. (1) When deciding whether or not to oppose bail, a prosecutor shall consider carefully- Consideration when opposing bail.

- (a) the law;
- (b) the charges;
- (c) the strength of the evidence;
- (d) the protection of victims; witnesses and the general public;
- (e) the personal circumstances of the defendant if granted bail;
- (f) the likelihood of the commission of offences if defendant is granted bail;

- (g) the likelihood of the defendant's failure to attend Court; and
- (h) any other relevant factor.

(2) Where a prosecutor wishes to oppose bail the provisions outlined under sub-regulation (1) shall be in an affidavit.

General bail conditions.

4. The general conditions for assessing bail are-

- (a) necessity;
- (b) reasonability;
- (c) proportionality; and
- (d) enforceability.

Circumstances in which bail may be denied.

5. (1) Where the offence or one of the offences in relation to which a defendant is charged or stands to be convicted, is an indictable offence, bail may be denied in the following circumstances-

- (a) the Court is satisfied that there are substantial grounds for believing that the defendant if released on bail would-
 - (i) fail to appear in Court;
 - (ii) commit an offence while on bail;
 - (iii) likely endanger the safety of victims or the public;
 - (iv) likely interfere with witnesses or obstruct the course of justice; or
 - (v) likely endanger national security.
- (b) the defendant is in custody in pursuance of the sentence of a Court;

- (c) the Court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this regulation for want of time since the institution of the proceedings against the defendant, provided the defendant shall not be kept in custody for more than 24 hours;
- (d) the defendant is charged with an offence alleged to have been committed while he was released on bail;
- (e) the defendant's case is adjourned for inquiries or a report and it appears to the Court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody, provided the defendant shall not be kept in custody for more than 24 hours;

(2) In deciding whether or not any of the circumstances specified in paragraph (a) of sub-regulation (1) exists in relation to any defendant, the Court shall take into consideration the following-

- (a) the nature and seriousness of the offence;
- (b) the defendant's character, association and community ties;
- (c) the defendant's record with regard to the fulfilment of his obligations under previous bail;
- (d) whether the defendant is a repeat offender;
- (e) the defendant's health profile; or
- (f) any other factor which appears to be relevant.

(3) Bail may be denied to a defendant who is charged with an offence punishable with imprisonment if the Court is satisfied that the defendant should be kept in custody for his own welfare.

(4) Bail may be denied to a defendant in relation to an offence which is not punishable with imprisonment if -

- (a) he has failed to comply with earlier bail conditions;
- (b) sub-regulation (3) applies;
- (c) the defendant is serving a custodial sentence imposed by a Court.

General provision on bail.

6. (1) A Court, in order to ensure the defendant's attendance in Court, may require a defendant to whom bail is granted to provide a surety to-

- (a) secure the defendant's attendance in court; or
- (b) deposit into Court a specified amount of money in cases dealing exclusively with the loss of a specified amount of money;

Provided that the amount of money stated shall not exceed the maximum fine a Magistrate is empowered to impose.

(2) A defendant who is granted bail may be required to-

- (a) surrender his travel documents to the Court;
- (b) inform the Court if he intends to leave Sierra Leone; or
- (c) comply with other requirements that the Court deems necessary to ensure that the defendant-

- (i) surrenders to Court;

- (ii) does not commit an offence while on bail;

- (iii) does not interfere with witnesses or obstruct the course of justice.

(3) The requirements referred to in paragraph (c) of sub-regulation (2) may include the imposition of a curfew in respect of a defendant to whom bail is granted, between the hours specified by the Court requiring the person to remain within a specified locality during the specified hours.

(4) Where a parent or guardian of a child consents to be a surety for the child for the purposes of this Regulation, the parent or guardian may be required to ensure that the child complies with any condition imposed on him in but no condition shall be imposed on the parent or guardian where it appears that the child will be over the age of eighteen years at the time appointed for him/her to attend Court.

7. (1) The Court shall consider an alternative to remand when making a bail decision in the case of a defendant who- ^{Special needs considerations.}

- (a) is a child;
- (b) is severely sick or ill;
- (c) has physical disabilities;
- (d) has mental disabilities;
- (e) is pregnant;
- (f) is a lactating mother; or
- (g) is a primary caregiver.

(2) The Court shall only resort to detention taking into account the nature and circumstances of the offence and the risk that the defendant, referred to in sub-regulation (1), poses.

Bail records.

8. (1) Where a court-

- (a) grants bail;
- (b) denies bail; or
- (c) varies any condition of bail;

the court shall give reasons for doing so and shall make a record of the decision.

(2) The defendant shall be entitled to have a copy of the record referred to in sub-regulation (1) after payment of the prescribed fee.

Absence of defendant at hearing.

9. Where a defendant who has been released on bail fails to attend Court at the time appointed for him to do so, the Court shall order his arrest by warrant.

Bail with surety.

10. (1) In considering the suitability of a proposed surety where a defendant is admitted to bail under subsection (6) of section 79 of the Act-

- (a) regard shall be had to such factors as the Court thinks fit, including -
 - (i) the surety's profession, occupation, trade or business;
 - (ii) the surety's character and his previous convictions if any;
 - (iii) the surety's relationship to the defendant; and
 - (iv) any other relevant factor.
- (b) the surety shall be required to make a declaration in the prescribed form.

(2) A Court shall not reject a surety unless in the opinion of the Court he is unsuitable for the purpose.

(3) Where a Court grants a person bail under sub-regulation (1) but is unable to release the person because no surety or no suitable surety is available, the court shall fix bail conditions that are reasonable and proportionate to the offence for which bail is granted and take into account the individual circumstances of the defendant.

11. The Court shall ensure that sureties understand their obligations and the risks they assume when they undertake to serve as sureties. Obligations of sureties.

12. The Court may accept any of the following security documents- Security documents.

- (a) passport or other travelling documents;
- (b) national identity card, voter identity card or National Social Security and Insurance Trust card;
- (c) proof of employment;
- (d) bank statement;
- (e) proof of residence;
- (f) title deeds; or
- (g) a testimonial from a Chief, a Tribal Authority, a community leader or somebody who is vested with authority in the community.

13. Where a defendant applies for a review of the conditions of bail, the surety shall be informed of the application and the nature and likely consequences of the variation sought. Review of conditions.

Forfeiture of security.

14. Where a surety has provided a security for the purpose of ensuring that a defendant appears in court and the defendant fails to appear, the court shall apply the provisions as stipulated under section 129 of the Act .

Release of Surety

15. (1) A surety shall be released from his obligation in the following circumstances–

- (a) where the court grants a release on an application made under Regulation 13,
- (b) where the court makes an order under section 129 of the Act,
- (c) where the defendant is acquitted, discharged or convicted.

(2) Where a surety is released, the defendant-


- (a) shall be present and notified of the release; and
- (b) may be taken into custody until he provides another surety.

MADE this day of , 2017.


Abdulai Hamid Charm
Chief Justice

Chairman 

Nicolas C. Browne-Marke
Justice of the Supreme Court

Member 

Reginald Fynn
Justice of the Appeals Court

Member 

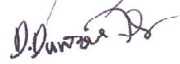
Miatta Samba
Justice of the High Court

Member 

Sulaiman A. Bah
Director of Public Prosecutions
Member



Dandyson Durosime Thompson
First Parliamentary Counsel
Member



Gerard J. Soyey
Nominee of the Attorney-General
and Minister of Justice
Member



Centus Macauley
Legal Practitioner
Member



Ransford Johnson
Legal Practitioner
Member



EXPLANATORY MEMORANDUM

(This explanatory memorandum is not part of the Order but is intended to indicate its general purport)

The Bail Regulations are to guide Judges, Magistrates, judicial officers (and the police) in the application of the bail provisions of the Criminal Procedure Act 1965. The Bail Regulations seek to ensure that the bail decision process complies with the requirements of the Constitution, specifically that every person shall be *presumed innocent until proven guilty* and that every accused person *has the right to liberty* as provided by the constitution. Pre-trial detention shall be a measure of last resort and the criminal justice institutions are with these regulations aiming to ensure respect for these fundamental principles while guiding the police and judicial officers (or authorities) responsible for granting bail. Finally, these regulations seek to balance the rights of suspects and accused persons with the public interest, including the rights of victims.

HON. SHEKU B. B. DUMBUYA,
Speaker.

FREETOWN,
SIERRA LEONE