



## **Bail Amendment Act 2011**

Public Act 2011 No 82  
Date of assent 17 October 2011  
Commencement see section 2

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**Schedule**  
**Amendments to principal Act**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Bail Amendment Act 2011.

**2 Commencement**

- (1) Sections 4, 5, and 7 to 14 come into force on a date appointed by the Governor-General by Order in Council.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council.
- (3) Any provision that has not earlier been brought into force comes into force on the day that is 2 years after the date on which this Act receives the Royal assent.

**3 Principal Act amended**

This Act amends the Bail Act 2000.

**4 Exercise of discretion when considering bail pending sentencing**

Section 13 is amended by inserting the following subsections after subsection (4):

- “(4A) Despite being satisfied that it would otherwise be in the interests of justice to grant bail, the court may remand the defendant in custody for the purpose described in subsection (4B) if it is satisfied that—
- “(a) the defendant has breached a condition of bail imposed under section 31(2A); and
  - “(b) there is no other reasonable means to achieve the purpose described in subsection (4B).
- “(4B) The purpose referred to in subsection (4A) is to ensure that the defendant takes the steps necessary for the proceedings to be progressed within a reasonable time frame.”

**5 Section 19 substituted**

Section 19 is repealed and the following section substituted:

**“19 Publication of matters relating to hearing**

- “(1) No person may publish a report or account of any matters dealt with at a bail hearing, apart from the following matters:
- “(a) the identity of the defendant applying for bail;
  - “(b) the charges faced by the defendant;
  - “(c) the decision of the court on the application;
  - “(d) the conditions of bail, if bail is granted.
- “(2) Despite subsection (1), a court may make an order—
- “(a) that permits publication of other details; or
  - “(b) that prohibits publication of all or any of the details set out in subsection (1)(a) to (d).
- “(3) The general prohibition on publication of details of a bail hearing under subsection (1), and any specific prohibition that is ordered under subsection (2)(b), applies until—
- “(a) the conclusion of the defendant’s trial; or
  - “(b) any earlier time ordered by the court.
- “(4) For the purposes of subsection (3), the **conclusion of the defendant’s trial** means—
- “(a) the expiry of the appeal period for an appeal of the decision or verdict at the defendant’s trial; or
  - “(b) if the decision or verdict is appealed, the date on which that appeal is finally determined or withdrawn.
- “(5) Every person commits an offence who knowingly or recklessly publishes details of a bail hearing in breach of subsection (1), or in breach of any specific prohibition that is ordered under subsection (2), and is liable on conviction,—
- “(a) in the case of an individual, to a term of imprisonment not exceeding 6 months;
  - “(b) in the case of a body corporate, to a fine not exceeding \$100,000.
- “(6) Every person commits an offence who publishes details of a bail hearing in breach of subsection (1), or in breach of any specific prohibition that is ordered under subsection (2), and is liable on conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$25,000;

“(b) in the case of a body corporate, to a fine not exceeding \$50,000.

“(7) Subsection (6) does not apply to a person who hosts material on websites or other electronic retrieval systems that can be accessed by a user unless the specific details have been placed or entered on the site or system by that person.

“(8) In a prosecution for an offence against subsection (6), it is not necessary for the prosecution to prove that the defendant intended to commit an offence.”

## **6 Defendant admitted to bail by Police employee**

(1) Section 21 is amended by repealing subsection (1) and substituting the following subsections:

“(1) Any Police employee may, if he or she considers it prudent to do so, take the bail bond of a person who—

“(a) is charged with an offence; and

“(b) has been arrested without warrant.

“(1A) Subsection (1) is subject to sections 9, 10, 12, and 16.”

(2) Section 21(3) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) is subject to the condition that, at a time and place to be specified in the bond, the person bailed attend personally before a court.”

(3) Section 21 is amended by repealing subsection (4) and substituting the following subsections:

“(4) The time specified in the bond for the purpose of subsection (3)(c) must not be later than 14 days from the date of the bond.

“(4AA) Subsection (4AB) applies only if—

“(a) the time specified for the purpose of subsection (3)(c) is not later than 7 days from the date of the bond; or

“(b) the court at which the defendant is to be required by the bond to attend will be closed for more than 7 consecutive days after the date that the defendant is arrested.

“(4AB) The Police employee who takes the bail bond of the person may, in addition to the conditions that may be imposed under subsection (3), impose any condition that might be imposed by a judicial officer or Registrar under section 30(2) or (4).”

**7 Conditions of bail**

- (1) Section 31 is amended by inserting the following subsection after subsection (2):

“(2A) When considering bail pending sentencing, the District Court or Registrar may impose any condition that the court or the Registrar considers reasonably necessary to ensure that the defendant takes the steps necessary for the proceedings to be progressed within a reasonable time frame.”
- (2) Section 31(3) is amended by inserting “or (2A)” after “subsection (2)”.

**8 Issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail**

- (1) Section 36(4)(a) is amended by inserting “, or a copy of it,” after “warrant”.
- (2) Section 36(4)(b) is amended by inserting “, or a copy of it,” after “it”.

**9 Issue of warrant to arrest defendant absconding or breaching bail condition**

- (1) Section 60(4)(a) is amended by inserting “, or a copy of it,” after “warrant”.
- (2) Section 60(4)(b) is amended by inserting “, or a copy of it” after “it”.

**10 Transitional provision regarding offence provision under new section 19 of principal Act**

- (1) This section applies if an Order in Council is made under section 2(1) bringing section 5 into force before the date appointed under section 2(2) or provided by section 2(3).
- (2) Until the date appointed under section 2(2) or provided by section 2(3), section 19 of the principal Act must be read as if the offence prescribed in that section were punishable on summary conviction.

**11 Transitional provision regarding section 5**

- (1) This section applies to any bail hearing if the proceedings for the offence with which the defendant is charged were commenced before the date on which section 5 came into force.
- (2) Section 19 of the principal Act, as it was before section 5 came into force, applies.
- (3) Section 397(3) of the Criminal Procedure Act 2011 (which sets out when a proceeding has commenced) applies for the purpose of this section whether or not section 397(3) has itself been brought into force.

**12 Transitional provision regarding sections 4 and 7**

- (1) This section applies to any decision regarding the granting of bail if the proceedings for the offence with which the defendant is charged were commenced before the date on which sections 4 and 7 came into force.
- (2) Sections 13 and 31 of the principal Act, as they were before sections 4 and 7 came into force, apply.
- (3) Section 397(3) of the Criminal Procedure Act 2011 (which sets out when a proceeding has commenced) applies for the purpose of this section whether or not section 397(3) has itself been brought into force.

**13 Transitional provision regarding sections 8 and 9**

Sections 36(4) and 60(4) of the principal Act (as amended by sections 8 and 9) apply to the execution of any warrant of arrest on or after the date on which sections 8 and 9 come into force even if the warrant was issued before that date.

**14 Expiry of sections 7 to 9**

Sections 7 to 9 expire on the date that section 15 comes into force.

**15 Further amendments to principal Act**

The principal Act is amended as set out in the Schedule.

**16 Application of amendments made by section 15**

The amendments made by section 15 apply in respect of any decision regarding the granting of bail to a defendant in relation to a proceeding for an offence that was commenced before section 15 came into force in accordance with the provisions of sections 397 and 399 to 401 of the Criminal Procedure Act 2011.

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## Schedule Amendments to principal Act

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### Section 3

Definition of **committal for trial**: repeal.

Definition of **offence**: repeal.

Insert in its appropriate alphabetical order:

“**judicial officer** has the same meaning as in section 5 of the Criminal Procedure Act 2011”.

### Section 13(4A)

Omit “31(2A)” and substitute “30(3A)”.

### Section 15(1)

Repeal and substitute:

“(1) If a court remands a defendant at any stage of the proceedings for the offence with which the defendant is charged, including for sentence, and the defendant appears to the court to be of or over the age of 17 years but under the age of 20 years, it must release the defendant on bail or otherwise subject to such conditions as it thinks fit.”

### Section 15(2)(b)

Repeal and substitute:

“(b) section 175 of the Criminal Procedure Act 2011,—”.

### Section 15(3)

Omit “subsections (1) and (2) of section 142 of the Criminal Justice Act 1985” and substitute “sections 171(1) and 172(1) of the Criminal Procedure Act 2011”.

### Section 22(1)

Repeal and substitute:

“(1) The Police employee taking a bail bond under section 21 must enter in it—  
“(a) the particulars of the defendant; and  
“(b) the particulars of the charge; and

**Section 22(1)**—*continued*

- “(c) the particulars of the defendant’s surety or sureties (if any) entering into the bond; and
- “(d) the condition or conditions of the bond, including the court, date, and time at which the defendant is required to appear; and
- “(e) the sums respectively acknowledged; and
- “(f) any other information required by rules made under section 386 of the Criminal Procedure Act 2011 to be included in a summons issued under section 28 of that Act for a category 1 offence.”

**Section 24**

Omit “summary”.

**Section 25(1)(b) and (2)(a)**

Omit “section 45A of the Summary Proceedings Act 1957” and substitute “section 167(2) of the Criminal Procedure Act 2011” in each case.

**Section 26**

Omit “38 and 43” and substitute “39, 51, and 52”.

**Parts 3 and 4**

Repeal and substitute:

**“Part 3****“Court bail****“Subpart 1—Granting of bail on adjournment****“27 Bail on adjournment**

- “(1) In any case referred to in section 168(1) of the Criminal Procedure Act 2011 (which relates to dealing with a defendant on adjournment), a judicial officer may grant the defendant bail under this section.
- “(2) A Registrar may exercise the power conferred by subsection (1) to grant bail if the prosecutor agrees.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

**“28 Warrant for detention of defendant remanded on bail**

If the defendant is granted bail under section 27 but the defendant is not released within the period specified in section 31(3)(a), a judicial officer or Registrar may—

- “(a) issue a warrant under the Criminal Procedure Act 2011 for the detention of the defendant in custody until a date, time, and place appointed for bail to be reconsidered (which date and time must be as soon as reasonably practicable); and
- “(b) certify on the back of the warrant the fact that the judicial officer or Registrar has granted the defendant bail, and the condition or conditions imposed.

**“29 Defendant, if bailable as of right, to be brought before court on request**

“(1) A defendant who is bailable as of right must, if the defendant so requests, be brought before a court for the purpose of making an application for bail if—

- “(a) the defendant has been remanded in custody under section 168 of the Criminal Procedure Act 2011; and
- “(b) the defendant did not make application for bail under this Act at the time of the remand.

“(2) The application may be granted as if it were an application made at the time at which the defendant was remanded.

“(3) If bail is granted under this section, the particulars required to be certified by the judicial officer or Registrar under section 28(b) must be certified in writing by the court granting bail, and forwarded to the prison manager of the prison in which the defendant is detained under the remand warrant.

**“30 Conditions of bail**

“(1) Subject to sections 31 and 40, if a defendant is granted bail, the defendant must be released on condition that the defendant attend personally—

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

- “(a) at the time and place at which the hearing is adjourned;  
or
- “(b) at every time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.
- “(2) A judicial officer or Registrar may impose, as a further condition of the defendant’s release, a condition that the defendant report to the Police at the time or times and at the place or places that the judicial officer or Registrar orders.
- “(3) When considering bail pending sentencing, a judicial officer or Registrar may impose any condition that the judicial officer or Registrar considers reasonably necessary to ensure that the defendant takes the steps necessary for the proceedings to be progressed within a reasonable timeframe.
- “(4) Whether or not the judicial officer or Registrar imposes a condition under subsection (2) or (3), the judicial officer or Registrar may impose any other condition that the judicial officer or Registrar considers reasonably necessary to ensure that the defendant—
- “(a) appears in court on the date to which the defendant has been remanded; and
- “(b) does not interfere with any witness or any evidence against the defendant; and
- “(c) does not commit any offence while on bail.
- “(5) Despite subsection (4), the judicial officer or Registrar must not require as a further condition of the defendant’s release the deposit of any sum or the entering into of any obligation in the nature of a bond, guarantee, or surety, whether by the defendant or any other person.
- “(6) Subsection (5) does not apply if bail is granted by the High Court.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

*“Procedures after defendant granted bail***“31 Release of defendant granted bail**

- “(1) If a defendant is granted bail, the Registrar must prepare a notice of bail or a bail bond (whichever is applicable) setting out the conditions of bail imposed by or under section 30.
- “(2) The Registrar or (as the case may require) the judicial officer or prison manager of the prison in which the defendant is detained must—
- “(a) give the notice of bail or bail bond to the defendant; and
  - “(b) be satisfied that the defendant understands the conditions of bail; and
  - “(c) require the defendant to sign the notice of bail or bail bond.
- “(3) If a defendant is granted bail, the judicial officer or Registrar may direct that the defendant be detained in the custody of the Court—
- “(a) for such time, not exceeding 2 hours, as may be necessary to enable the notice of bail or bail bond to be prepared and signed; and
  - “(b) if, within the period of 2 hours, the defendant is not released (whether by reason of having refused to sign the notice of bail or bail bond or for any other reason), for such time as may be necessary to enable a warrant to be issued under section 28.
- “(4) If bail is granted to a defendant who has been remanded in custody and is in custody only under the warrant issued in respect of the remand, the defendant must be released from custody as soon as is reasonably practicable after the defendant has signed the notice of bail or bail bond.
- “(5) A copy of the notice of bail or bail bond must be given to the defendant on his or her release or as soon as practicable after that.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

**“32 Warrant of deliverance**

- “(1) Subject to subsection (3), in any case where a warrant has been issued under section 28, a warrant of deliverance in the prescribed form must be issued and sent to the prison manager of the prison in which the defendant is detained.
- “(2) The warrant of deliverance may be issued by any Judge or Registrar on being satisfied that the defendant is entitled to be released and that the requirements of section 31 have been met.
- “(3) No warrant of deliverance need be issued if the Registrar before whom the defendant signs the notice of bail endorses on the remand a certificate that the defendant has signed the notice of bail or bail bond, and that the defendant is accordingly entitled to be released.

**“33 Variation of conditions of bail imposed by the District Court**

- “(1) If the defendant has been granted bail by a District Court, the court may, on the application of the defendant or the prosecutor, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail.
- “(2) If the proceedings for the offence with which the defendant is charged are transferred to another District Court or the High Court, any application for an order varying or revoking any condition of bail or substituting or imposing any other condition of bail must be made to the court to which the proceedings have been transferred.
- “(3) A Registrar may exercise the power conferred by subsection (1) to make an order if the prosecutor agrees.
- “(4) If a District Court or Registrar 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 Registrar orders, any Registrar may, on the application of the defendant, make an order varying the time or times

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

or the place or places at which the defendant is required to so report.

- “(5) If a District Court or Registrar varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply:
- “(a) if the defendant is present at the court, the Registrar must—
- “(i) as soon as is reasonably practicable prepare a new notice of bail setting out the conditions of bail as amended (if any); and
- “(ii) be satisfied that the defendant understands the conditions of bail; and
- “(iii) require the defendant to sign the notice of bail:
- “(b) if the defendant is not present at the court, the Registrar must send written notice to the defendant requiring the defendant to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions as amended (if any).
- “(6) If, in any case to which subsection (5) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to sign a fresh notice of bail, the Registrar or a District Court Judge may issue a warrant for the arrest of the defendant.

**“34 Variation of conditions of bail imposed by the High Court**

- “(1) Subject to subsection (3), if a defendant is granted bail by the High Court, a High Court Judge may, 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.
- “(2) Subject to subsection (3), if the High Court has, in granting bail to a 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 orders, any Registrar of the High Court or of a District Court may, on the application of the defendant,

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

make an order varying the time or times or the place or places at which the defendant is required to report.

- “(3) No application may be made under subsection (1) or (2) in respect of a bail bond that has been entered into in any case where sureties are required, unless the sureties to the bail bond have consented to the making of the application.
- “(4) If a High Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply:
- “(a) if the defendant is present at the High Court, the Registrar must—
- “(i) as soon as is reasonably practicable prepare a new bail bond setting out the conditions of bail as amended (if any); and
- “(ii) satisfy himself or herself that the defendant granted bail understands the conditions of bail; and
- “(iii) require the defendant to sign the bail bond:
- “(b) if the defendant is not present at the High Court, the Registrar of the court that varied or revoked or substituted or imposed the condition must send written notice to the defendant 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 amended (if any).
- “(5) If, in any case to which subsection (4) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond, the Registrar must refer the matter to a Judge, who may issue a warrant for the arrest of the defendant.

**“35 Defendant on bail may be arrested without warrant in certain circumstances**

- “(1) Any constable may arrest without warrant a defendant who has been released on bail by the Supreme Court or the Court of Ap-

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

peal or the High Court or a District Court or Registrar or Police employee if the constable believes on reasonable grounds that—

- “(a) the defendant has absconded or is about to abscond for the purpose of evading justice; or
  - “(b) the defendant has contravened or failed to comply with any condition of bail.
- “(2) A defendant who is arrested under subsection (1) must—
- “(a) be brought before a District Court as soon as possible if the defendant was released on bail by a District Court or Registrar in relation to a category 1 or 2 offence, or by a Police employee in relation to any offence; or
  - “(b) be brought before a High Court Judge or District Court Judge as soon as possible if the defendant was released on bail in any circumstances to which paragraph (a) does not apply.
- “(3) In any such case, the judicial officer, on being satisfied that the defendant had absconded or was about to abscond or has contravened or failed to comply with any condition of bail, must reconsider the question of bail.
- “(4) After a defendant has been arrested under subsection (1), the defendant cannot be bailed as of right and is bailable only under section 7(5).
- “(5) This section does not apply if section 36 applies.
- “(6) Nothing in this section prevents a constable from seeking a warrant to arrest a defendant under section 37.

**“36 Arrest of defendant charged with drug dealing offence**

- “(1) If a defendant has been released on bail under section 16, any constable may arrest the defendant without warrant if—
- “(a) the constable believes on reasonable grounds that the defendant has absconded or is about to abscond for the purpose of evading justice; or

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

- “(b) the Police have been notified in writing by any surety for the defendant that the surety believes that the defendant has absconded or is about to abscond for the purpose of evading justice, and the constable is satisfied that there are reasonable grounds for that belief; or
  - “(c) the constable believes, on reasonable grounds, that the defendant has broken, is breaking, or is about to break, any condition of bail (whether imposed under section 30 or otherwise); or
  - “(d) the Police have been notified by any surety for the defendant that the surety believes that the defendant has broken, is breaking, or is about to break, any such condition of bail, and the constable is satisfied that there are reasonable grounds for that belief.
- “(2) A defendant who has been arrested under subsection (1) must be brought before a High Court Judge as soon as possible, and in any event not later than 72 hours after the arrest.
- “(3) If a defendant is brought before a High Court Judge under subsection (2), the Judge must, if satisfied on the balance of probabilities that the defendant has absconded or was about to abscond, remand the defendant in custody.
- “(4) If a defendant is brought before a High Court Judge under subsection (2), the Judge may,—
- “(a) if satisfied on the balance of probabilities that the defendant has broken, was breaking, or was about to break any condition of bail, remand the defendant in custody; or
  - “(b) release the defendant.
- “(5) If a defendant is released under subsection (4)(b), the defendant’s bail bond continues in force in all respects as if the defendant had not been arrested under subsection (1).
- “(6) Despite subsections (4)(b) and (5), if a defendant was arrested under subsection (1)(d), the Judge may release the defendant under subsection (4)(b) only if—
- “(a) the surety consents in writing to the release; or

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

“(b) a fresh bail bond is issued.

“(7) Nothing in this section prevents a constable from seeking a warrant to arrest a defendant under section 37.

**“37 Issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail**

“(1) A judicial officer or Registrar of the relevant court may issue a warrant in the prescribed form for the arrest of a defendant if—

“(a) the judicial officer or Registrar is satisfied by evidence on oath that—

“(i) the defendant has absconded or is about to abscond for the purpose of evading justice; or

“(ii) the defendant has contravened or failed to comply with any condition of bail; or

“(b) the defendant—

“(i) does not attend personally at the time and place specified in the notice of bail or, as the case may be, the bail bond; or

“(ii) does not attend personally at any time or place to which during the course of the proceedings the hearing has been adjourned.

“(2) A warrant to arrest a defendant under this section must be directed to a constable by name or generally to every constable.

“(3) The warrant may be executed by any constable.

“(4) For the purpose of executing a warrant issued under this section, the constable executing it may at any time enter on to any premises, by force if necessary, if the constable has reasonable grounds to believe that the defendant against whom it is issued is on those premises.

“(5) The constable executing the warrant—

“(a) must have the warrant, or a copy of it, with him or her; and

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

- “(b) must produce it, or a copy of it, on initial entry and, if requested, at any subsequent time; and
  - “(c) if he or she is not in uniform, produce evidence that he or she is a constable.
- “(6) If a defendant is arrested under a warrant issued under this section,—
- “(a) section 35(2) to (4) apply as if the defendant had been arrested under section 35(1); and
  - “(b) in the case of a person who is charged with or convicted of a drug dealing offence and who has been released on bail in relation to that offence, section 36(2) to (6) apply as if the defendant had been arrested under section 36(1).
- “(7) In this section, **judicial officer or Registrar of the relevant court** means—
- “(a) if the court that is conducting the proceedings for the offence with which the defendant is charged is a District Court, a judicial officer or Registrar of a District Court; or
  - “(b) if the court that is conducting the proceedings for the offence with which the defendant is charged is the High Court, a Judge or Registrar of that court.
- “**38 Failure to answer bail**
- A defendant commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$2,000 who, having been released on bail by the Supreme Court, the Court of Appeal, the High Court, a District Court, or a Registrar,—
- “(a) fails without reasonable excuse to attend personally at the time and the court specified in the notice of bail or bail bond; or
  - “(b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned; or

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 1—continued

“(c) fails without reasonable excuse to comply with any condition imposed under section 40(3).

**“39 Non-performance of condition of bail may be certified and recorded**

- “(1) If a defendant who has been released on bail at any time fails to comply with any condition of bail, a judicial officer of the relevant court may certify on the back of the notice of bail or, as the case may require, the bail bond the non-performance of that condition.
- “(2) A certificate given by a judicial officer under subsection (1) is, in the absence of proof to the contrary, sufficient evidence for the purposes of sections 24 and 38 that the defendant has failed to comply with the condition of the notice of bail or bail bond specified in the certificate.
- “(3) In addition to the certification described in subsection (1), if a defendant who has been released on bail at any time fails to comply with any condition of bail, without reasonable excuse, a judicial officer of the relevant court must direct the Registrar of that court that the nature of the condition and the non-performance of the condition be entered in the court record kept in accordance with section 184 of the Criminal Procedure Act 2011.
- “(4) Despite subsection (3), the judicial officer may decide not to direct that the failure to comply be entered in the court record if in the judicial officer’s opinion the failure to comply is of such a minor nature that it does not warrant being taken into account when considering an application for bail from the defendant on a subsequent occasion.
- “(5) A failure to comply with any condition of bail that is entered in the court record under subsection (3) may be considered in any subsequent application for bail made by that defendant over his or her lifetime.
- “(6) In this section, **judicial officer of the relevant court** has the same meaning as in section 37(7).

**Parts 3 and 4—continued**

## Part 3—continued

## “Subpart 2—Bail on deferment of sentence

**“40 Bail on deferment of sentence**

- “(1) This section applies if the start date of a sentence imposed on an offender is deferred under section 80W or 100 of the Sentencing Act 2002 and the offender is not liable to be detained under any other sentence or order.
- “(2) If this section applies, the court that defers the start date of the offender’s sentence must grant the offender bail.
- “(3) An offender who is granted bail under this section must be released on condition that the offender must,—
- “(a) if the sentence is deferred under section 80W of the Sentencing Act 2002,—
    - “(i) go to and remain at the home detention residence (as defined in section 4 of that Act) at the expiry of the period of deferral specified by the court, unless absent in accordance with section 80C(3)(a) or (b) of that Act; and
    - “(ii) advise a probation officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence; or
  - “(b) if the sentence is deferred under section 100 of the Sentencing Act 2002, surrender himself or herself to the prison manager of the prison concerned at the expiry of the period of deferral specified by the court.
- “(4) The provisions of sections 30 to 39, and 44 to 52, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.
- “(5) If any decision is made by a District Court under section 33(1) (as applied by subsection (4)) in respect of an offender, the provisions of section 44(3) to (6) and section 45, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.
- “(6) If any decision is made by the High Court under section 34(1) (as applied by subsection (4)) in respect of an offender, the

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 2—continued

provisions of sections 47 and 48, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.

**“Subpart 3—Appeals on question of bail***“Appeals from decisions of Justices or  
Community Magistrates***“41 Appeals from decisions of Justices or Community Magistrates relating to bail**

- “(1) If a Justice or Justices or a Community Magistrate or Community Magistrates refuse to grant bail to a defendant (whether before or after conviction), the defendant may appeal to a District Court presided over by a District Court Judge against that refusal.
- “(2) If a Justice or Justices or a Community Magistrate or Community Magistrates grant bail to a defendant (whether before or after conviction), the prosecutor may appeal to a District Court presided over by a District Court Judge against that decision.
- “(3) Subsection (4) applies if, in respect of any grant of bail to a defendant (whether before or after conviction),—
- “(a) a Justice or Justices or a Community Magistrate or Community Magistrates have imposed any condition of bail, or have refused to impose any condition of bail, or any particular condition of bail; or
- “(b) a Justice or Justices or a Community Magistrate or Community Magistrates have, on an application made under section 33(1), 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.
- “(4) The defendant or the prosecutor may appeal to a District Court presided over by a District Court Judge 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.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

- “(5) For the purposes of an appeal under this section, the failure of a Justice or Justices or a Community Magistrate or Community Magistrates to impose any condition of bail, or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed is deemed to be a refusal to impose the condition.
- “(6) No person may seek bail in the High Court under that court’s inherent jurisdiction—
- “(a) who has been refused bail by a Justice or Justices or a Community Magistrate or Community Magistrates; or
  - “(b) in respect of whom a Justice or Justices or a Community Magistrate or Community Magistrates have imposed any condition of bail or refused to impose any condition of bail, or any particular condition of bail.
- “(7) An appeal under this section is by way of rehearing.
- “42 Procedure relating to appeal under section 41**
- “(1) Sections 273 to 275 and subpart 12 of Part 6 of the Criminal Procedure Act 2011 apply to an appeal under section 41 as if the appeal were a first appeal against a decision on a costs order.
- “(2) Despite any other enactment or rule of law, on the hearing of the appeal it is not necessary to produce—
- “(a) any note or transcript of the evidence adduced to the District Court appealed from; or
  - “(b) any note of the reasons for the decision appealed against; or
  - “(c) any copy of any note or transcript referred to in paragraph (a) or (b).
- “(3) Every decision of a District Court presided over by a District Court Judge on an appeal under section 41 is final.
- “(4) No decision appealed against under section 41 is suspended merely because notice of that appeal has been given.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

- “(5) An appeal under section 41 that is not heard before the date on which the decision appealed against ceases to have any effect—
- “(a) lapses on that date; and
  - “(b) is deemed to have been abandoned.
- “(6) If, in the case of an appeal under section 41(2), the defendant does not appear at the hearing of the appeal, a District Court presided over by a District Court Judge may, if it thinks fit, issue a warrant for the arrest of the defendant.

**“43 Execution of decision of District Court on appeal relating to bail**

- “(1) If, on an appeal under section 41, a District Court presided over by a District Court Judge 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 must be issued out of the District Court and signed by a District Court Judge.
- “(2) The person who executes the warrant must 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.
- “(3) If, on an appeal in respect of any condition of bail, a District Court presided over by a District Court Judge varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions apply:
- “(a) if the defendant is present at the District Court to which the appeal was made, the Registrar of that court must,—
    - “(i) as soon as is reasonably practicable, prepare a new notice of bail setting out the conditions of bail as amended (if any); and
    - “(ii) satisfy himself or herself that the defendant understands the conditions of bail; and
    - “(iii) require the defendant to sign the notice of bail:

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

- “(b) if the defendant is not present at the District Court to which the appeal was made, the Registrar of the District Court appealed from must 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 decision on the appeal.
- “(4) If, in any case to which subsection (3) 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, the Registrar of the District Court appealed from must refer the matter to a District Court Judge, who may issue a warrant for the arrest of the defendant.

*“Appeals from decisions of District Court  
Judges*

**“44 Appeal from decision of District Court Judge relating to bail**

- “(1) If a District Court Judge refuses to grant bail to a defendant (whether before or after conviction), the defendant may appeal to the High Court against that refusal.
- “(2) If a District Court Judge grants bail to a defendant (whether before or after conviction), the prosecutor may appeal to the High Court against that decision.
- “(3) Subsection (4) applies if, in respect of any grant of bail to a defendant (whether before or after conviction),—
- “(a) a District Court Judge has imposed any condition of bail, or has 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 33(1), 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.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

- “(4) The defendant or the prosecutor 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.
- “(5) For the purposes of an appeal under this section, the failure of a District Court Judge to impose any condition of bail, or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed is deemed to be a refusal to impose the condition.
- “(6) An appeal under this section is by way of rehearing.
- “**45 Procedure relating to appeal under section 44**
- “(1) Sections 273 to 275 and subpart 12 of Part 6 of the Criminal Procedure Act 2011 apply to an appeal under section 44 as if the appeal were a first appeal against a decision on a costs order.
- “(2) Despite any other enactment or rule of law, on the hearing of an appeal under section 44 it is not necessary to produce—
- “(a) any note or transcript of the evidence adduced to the District Court appealed from; or
  - “(b) any note of the reasons for the decision appealed against; or
  - “(c) any copy of any note or transcript referred to in paragraph (a) or (b).
- “(3) Every decision of the High Court on an appeal under section 44 is final.
- “(4) No decision appealed against under section 44 is suspended merely because notice of that appeal has been given.
- “(5) An appeal under section 44 that is not heard before the date on which the decision appealed against ceases to have any effect—
- “(a) lapses on that date; and
  - “(b) is deemed to have been abandoned.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

“(6) If, in the case of an appeal under section 44(2), the defendant does not appear at the hearing of the appeal, the High Court may, if it thinks fit, issue a warrant for the arrest of the defendant.

**“46 Execution of decision of High Court on appeal relating to bail**

“(1) If, on an appeal under section 44, the High Court 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 must be issued out of the High Court and signed by a Judge.

“(2) The person who executes the warrant must 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.

“(3) If, on an 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 apply:

“(a) if the defendant is present at the High Court, the Registrar of the High Court must—

“(i) as soon as is reasonably practicable, prepare a new notice of bail setting out the conditions of bail as amended (if any); and

“(ii) satisfy himself or herself that the defendant understands the conditions of bail; and

“(iii) require the defendant to sign the notice of bail:

“(b) if the defendant is not present at the High Court, the Registrar of the District Court appealed from must 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.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

- “(4) If, in any case to which subsection (3) 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, the Registrar of the District Court appealed from must refer the matter to a District Court Judge who may issue a warrant for the arrest of the defendant.

*“Appeals from decisions of High Court***“47 Appeal from decision of High Court relating to bail**

- “(1) Subject to subsection (4), this section applies to any decision made (whether under any enactment or rule of law or otherwise) by a High Court Judge to—
- “(a) grant or refuse bail to a defendant; or
  - “(b) impose or substitute or revoke or vary any condition of bail; or
  - “(c) refuse to impose any condition of bail or any particular condition of bail; or
  - “(d) refuse to vary or revoke any condition of bail.
- “(2) Either the prosecutor or the defendant may appeal to the Court of Appeal against any decision to which this section applies.
- “(3) For the purposes of an appeal under this section, the failure of a High Court Judge to impose any condition of bail, or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed is deemed to be a refusal to impose the condition.
- “(4) Nothing in this section applies in respect of any decision made by a High Court Judge if that decision was made on appeal from any decision of a District Court.

**“48 Procedure relating to appeal under section 47**

- “(1) A defendant wishing to appeal under section 47 must file notice of appeal with the Registrar of the Court of Appeal within 10 days after the date of the decision to be appealed against.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

- “(2) An appeal under section 47 that is not heard before the date on which the decision appealed against ceases to have any effect—
- “(a) lapses on that date; and
  - “(b) is deemed to have been abandoned.
- “(3) No decision of a High Court Judge appealed against under section 47 is suspended merely because notice of that appeal has been given.
- “(4) No decision of a High Court Judge appealed against under section 47 is suspended merely because the defendant has applied for or been given leave to appeal to the Supreme Court against a decision of the Court of Appeal on the appeal under section 47.
- “(5) On an appeal under section 47 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.

**“49 Execution of decision of Court of Appeal on appeal relating to bail**

- “(1) If, on an appeal under section 47 against a refusal to grant bail to a defendant, the Court of Appeal determines that bail should be granted, the Court of Appeal must order that the defendant be released on bail, subject to such conditions as the Court of Appeal thinks fit.
- “(2) If, on an appeal under section 47 in respect of any condition of bail, the Court of Appeal revokes or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the court whose decision was appealed against must send written notice to the defendant 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.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

- “(3) If, in any case to which subsection (2) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond, the Registrar must refer the matter to a High Court Judge who may issue a warrant for the arrest of the defendant.
- “(4) If, on an appeal under section 47 against a grant of bail, the Court of Appeal determines that bail not be granted or, as the case may be, not be continued, a warrant for the detention in custody of the defendant must be issued out of the Court of Appeal and signed by a Judge of the court.
- “(5) The person who executes the warrant under subsection (4) must 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.
- “(6) A defendant to whom subsection (4) applies and who is not in custody may be arrested without warrant by any constable or any officer of a prison.

*“Appeals from decisions of Court of Appeal on appeal*

**“50 Execution of decision of Supreme Court on appeal relating to bail**

- “(1) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 47 against a refusal to grant bail to a defendant, the Supreme Court determines that bail should be granted, the Supreme Court must order that the defendant be released on bail, subject to any conditions the Supreme Court thinks fit.
- “(2) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 47 in respect of any condition of bail, the Supreme Court revokes or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against must send written notice to the defendant and to every surety

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

(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 Supreme Court's decision.

- “(3) If, in any case to which subsection (2) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond, the Registrar must refer the matter to a High Court Judge who may issue a warrant for the arrest of the defendant.
- “(4) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 47 against a refusal to grant bail to a defendant, the Supreme Court determines that bail not be granted or, as the case may be, not be continued, a warrant for the detention in custody of the defendant must be issued out of the Supreme Court and signed by a Judge of the court.
- “(5) The person who executes the warrant under subsection (4) must 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.
- “(6) A defendant to whom subsection (4) applies who is not in custody may be arrested without warrant by any constable or any officer of a prison.

*“Appeal against entry of non-performance of  
condition of bail*

**“51 Appeal against entry by Justice or Community Magistrate of non-performance of condition of bail in court record**

- “(1) If a Justice or Justices or a Community Magistrate or Community Magistrates direct under section 39 that the non-performance of a bail condition be entered into the court record, the defendant may, within 28 days of the direction being made, appeal the direction to a District Court presided over by a District Court Judge.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 3—continued

- “(2) After considering an appeal under subsection (1), the District Court Judge may order that—
- “(a) the direction stand; or
  - “(b) the direction be amended; or
  - “(c) the direction be revoked.
- “(3) There is no further right of appeal against a direction to enter the non-performance of a condition of bail in the court record than that given by this section.
- “(4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

**“52 Appeal against entry by District Court Judge or High Court Judge of non-performance of condition of bail in court record**

- “(1) If a District Court Judge or High Court Judge directs under section 39 that the non-performance of a bail condition be entered in the court record, the defendant may, within 28 days of the direction being made, appeal the direction to the High Court or the Court of Appeal, as the case may require.
- “(2) After considering an appeal under subsection (1), the High Court or the Court of Appeal may order that—
- “(a) the direction stand; or
  - “(b) the direction be amended; or
  - “(c) the direction be revoked.
- “(3) There is no further right of appeal against a direction to enter the non-performance of a condition of bail in the court record than that given by this section.
- “(4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

**Parts 3 and 4—continued**

## Part 3—continued

**“Subpart 4—Bail pending appeal against conviction or sentence****“53 Granting of bail to appellant in custody pending appeal to District Court presided over by District Court Judge**

- “(1) This section applies if a person is in custody under a conviction and is appealing the conviction or sentence, or both, to a District Court presided over by a District Court Judge.
- “(2) If the appellant is in custody only under the conviction to which the appeal relates, the appellant is bailable, at any time before the hearing of the appeal,—
- “(a) at the discretion of the Justice or Justices or a Community Magistrate or Community Magistrates who presided over the District Court whose determination is appealed against; or
- “(b) if that Justice or those Justices or that Community Magistrate or those Community Magistrates are not available, at the discretion of a District Court Judge or some other Justice or Community Magistrate.
- “(3) Subject to the provisions of section 31 (as applied by subsection (4)), if an appellant is granted bail, the appellant must be released on condition that the appellant attend personally at the District Court dealing with the appeal on the day on which the appeal is to be heard and on any day to which the hearing may from time to time be adjourned.
- “(4) If an appellant is granted bail under this section, the provisions of sections 30 to 33, 34, 37, 38, 39, and 51, as far as they are applicable and with any necessary modifications, apply as if the appellant were a defendant remanded in custody who had been granted bail.
- “(5) If an appellant is granted or refused bail under this section, or any decision is made under section 33(1) (as applied by subsection (4)) in respect of any appellant, the provisions of sections 41 and 42, as far as they are applicable and with any necessary modifications, apply as if the appellant were a de-

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 4—continued

defendant who had been granted or, as the case may be, refused bail.

- “(6) Section 54(6) applies for the purpose of this section.
- “(7) If an appeal is filed on a question of law under subpart 8 of Part 6 of the Criminal Procedure Act 2011 and the appeal relates to a person’s conviction, this section applies to the convicted person as it does to the appellant.

**“54 Granting of bail to appellant in custody pending appeal to High Court**

- “(1) This section applies if a person is in custody under a conviction and is appealing the conviction or sentence, or both, to the High Court.
- “(2) If the appellant is in custody only under the conviction to which the appeal relates, the appellant is bailable at any time before the hearing of the appeal—
- “(a) at the discretion of the District Court Judge who presided over the District Court whose determination is appealed against; or
- “(b) if that District Court Judge is not available, at the discretion of some other District Court Judge.
- “(3) Subject to the provisions of section 31 (as applied by subsection (4)), if an appellant is granted bail, the appellant must be released on condition that the appellant attend personally at the High Court on the day on which the appeal is to be heard and on any day to which the hearing may from time to time be adjourned.
- “(4) If an appellant is granted bail under this section, the provisions of sections 30 to 33, 35, 37, 38, 39, and 52, as far as they are applicable and with any necessary modifications, apply as if the appellant were a defendant remanded in custody who had been granted bail.
- “(5) If an appellant is granted or refused bail under this section, or any decision is made under section 33(1) (as applied by

**Parts 3 and 4—continued**Part 3—*continued*Subpart 4—*continued*

subsection (4)) in respect of any appellant, the provisions of sections 44 and 45, as far as they are applicable and with all necessary modifications, apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail.

“(6) For the purposes of this section, an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 83 of the Sentencing Act 2002 that another sentence or term of imprisonment is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed.

“(7) If an appeal is filed on a question of law under subpart 8 of Part 6 of the Criminal Procedure Act 2011 and the appeal relates to a person’s conviction, this section applies to the convicted person as it does to the appellant.

“Compare: 1957 No 87 s 125

**“55 Granting of bail to appellant in custody pending appeal to Court of Appeal or Supreme Court**

“(1) This section applies if a person is in custody under a conviction and is appealing the conviction or sentence, or both, to the Court of Appeal or the Supreme Court.

“(2) The Court of Appeal or the Supreme Court (as the case may be) or the Judge who presided at the trial in the court below may, if it or the Judge thinks fit, on the application of an appellant and on such terms and subject to such conditions as the court or Judge thinks fit, grant bail to the appellant pending the determination of the appeal, if the appellant is in custody only under the conviction to which the appeal relates.

“(3) If an appeal is filed on a question of law under subpart 8 of Part 6 of the Criminal Procedure Act 2011 and the appeal relates to a person’s conviction, this section applies to the convicted person as it does to the appellant.

**Parts 3 and 4—continued**

## Part 3—continued

## Subpart 4—continued

“(4) For the purposes of this section, an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 83 of the Sentencing Act 2002 that another sentence or term of imprisonment is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed.

**“56 Appeals on questions of law**

If under section 302(2) of the Criminal Procedure Act 2011 a District Court or the High Court has decided to postpone sentencing a person or deferred the commencement of any sentence imposed, the court may, in accordance with the applicable provisions of this Act and the Criminal Procedure Act 2011,—

- “(a) allow the defendant to go at large; or
- “(b) grant the defendant bail; or
- “(c) remand the defendant in custody.

**“57 Intermediate effects of appeal**

“(1) In every case where an appeal court directs a new trial or remits a sentence, the court must, in accordance with the applicable provisions of this Act and the Criminal Procedure Act 2011,—

- “(a) allow the defendant to go at large; or
- “(b) grant the defendant bail; or
- “(c) remand the defendant in custody.

“(2) If no application for bail has been made to the appeal court, the defendant may at any time apply to a High Court Judge or a District Court Judge (as the case may require), who may in the Judge’s discretion grant bail on such terms and subject to such conditions as the Judge thinks fit.

**“58 Time on bail pending appeal not to be taken as time served**

Section 95 of the Parole Act 2002 applies if an appellant is released on bail pending an appeal.

**Parts 3 and 4—continued**Part 3—*continued*Subpart 4—*continued***“59 Surrender of appellant released on bail**

- “(1) An appellant who has been released from custody on bail pending the hearing of the appeal may surrender himself or herself and apply to a judicial officer of the court that released the defendant on bail for the discharge of bail.
- “(2) A judicial officer who discharges the bail of a defendant may then issue a warrant in the prescribed form for the arrest of the appellant and for his or her committal to a prison for the unexpired term of the sentence originally imposed.”

**Schedule 1**

Repeal.

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**Legislative history**

29 September 2011	Divided from Criminal Procedure (Reform and Modernisation) Bill (Bill 243–2) by committee of the whole House as Bill 243–3B
4 October 2011	Third reading
17 October 2011	Royal assent

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This Act is administered by the Ministry of Justice.

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