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### 57. Bail

As explained in chapter 55, Ministers have given a commitment that detention will only be used as a last resort. The presumption is to grant temporary release wherever possible but there will be occasions when temporary release is not considered appropriate. Whilst detention may be warranted, there is also the alternative of granting CIO's or Secretary of State's bail upon application by those in detention. The advantages of granting bail are that:

- ◆ the forfeiture of a recognizance (or, in Scotland, bail bond) if bail is broken provides a disincentive to abscond;
- ◆ conditions (limited to those which are necessary to ensure that the applicant answers to bail) can be attached to bail e.g. surrendering a passport or reporting.;

- ◆ used as an alternative to immigration judge`s bail, it enables the IS to set the conditions, and may free an immigration judge`s time to hear more appeals rather than bail hearings.

## **57.1. Who is eligible for bail**

### **57.1.1. Illegal Entrants and persons served with notice of administrative removal**

Illegal entrants and persons served with notice of administrative removal are eligible to seek bail at all stages of the detention process. There is no requirement that they must have an appeal pending. Those detained on arrival pending examination under paragraph 16 (1) of schedule 2 to the Immigration Act 1971 are not eligible to apply for bail until they have been in the UK for 7days.

- ◆ When detained pending the giving of removal directions

*[Paragraph 22(1)(A) of Schedule 2 to the 1971 Act as amended by paragraph 11 of Schedule 2 to the 1996 Act]*

In the first 8 days of detention (beginning with the day on which detention commences) a person may only apply for bail to an Immigration Officer not below the rank of CIO. Thereafter, application for bail should be made to either the Secretary of State or Asylum and Immigration Tribunal

- ◆ When detained pending removal after removal directions have been set

*[Paragraph 34 of Schedule 2 to the 1971 Act as inserted by paragraph 12 of Schedule 2 to the 1996 Act]*

In the first 8 days of detention (beginning with the day on which detention commences) a person may only apply for bail to an Immigration Officer not below the rank of CIO. Thereafter applications for bail should be made to either the Secretary of State or the Asylum and Immigration Tribunal.

- ◆ When detained pending an appeal to an immigration judge or to the Tribunal

*[Paragraph 29 of Schedule 2 to the 1971 Act as amended by Paragraph 9 of Schedule 2 to the 1993 Act]*

In the first 8 days of detention (beginning with the day on which detention commences) a person may only apply for bail to an Immigration Officer not below the rank of CIO. Thereafter, applications for bail should be made to either the Secretary of State or the Asylum and Immigration Tribunal or a police officer of the rank of Inspector or above at any time while the appellant is detained in police custody (the police will normally refer such applications to the immigration office concerned).

Applications made to the the Asylum and Immigration Tribunal, must be made either:

- 1) before the Tribunal hears the appeal, provided that notice of appeal has been duly given and has not subsequently been withdrawn; or
- 2) when the Tribunal adjourns a hearing

### **57.1.2 Bail in potential Deportation cases**

Until February 2003 persons served with notice of intention to deport (APP104/ ICD 1070 series notice) and detained in accordance with paragraph 2(2) of Schedule 3 to the Act only became eligible for bail when they lodged an appeal against a decision to make a deportation order or a refusal to revoke a deportation order. Prior to February 2003, there was power to grant immigration bail if: (i) a recommendation for deportation was in force and the individual was detained under paragraph 2(1) of Schedule 3; (ii) the individual was detained under paragraph 2(2) of Schedule 3 and did not have an appeal pending of the type specified; or (iii) the individual was detained under paragraph 2(3) of Schedule 3 and had been detained prior to the making of the deportation order. With effect from 10 February 2003 section 54 of the Immigration and Asylum Act 1999 amended paragraphs 2 of Schedule 3 of the Immigration Act 1971 to extend the right of those subject to deportation action to apply for bail (regardless of whether or not an appeal is pending). Paragraphs 22 to 25 of Schedule 2 now apply in relation to a person detained pending deportation under Schedule 3 in the same way as those paragraphs apply to a person detained pending removal under Schedule 2.

- ◆ **When detained following recommendation for deportation by a court following criminal conviction**

*[Paragraphs 22 to 25 of the IA 1971 by virtue of paragraph 2 (4A) of schedule 3 and section 54 of the Immigration and Asylum Act 1999]*

In the first 8 days of detention (beginning with the day on which detention commences) a person may only apply for bail to an Immigration Officer not below the rank of CIO. Thereafter, applications for bail should be made to either the Secretary of State or the Asylum and Immigration Tribunal.

◆ **When detained having been notified of a decision to make a deportation order against them**

*[Paragraphs 22 to 25 of the IA 1971 by virtue of paragraph 2(4A) of Schedule 3 and Section 54 of the Immigration & Asylum Act 1999]*

In the first 8 days of detention (beginning with the day on which detention commences) a person may only apply for bail to an Immigration Officer not below the rank of CIO. Thereafter, applications for bail should be made to either, the Secretary of State or the Asylum Immigration Tribunal.

◆ **When subject of a deportation order and detained pending removal or voluntary departure**

*[Paragraphs 22 to 25 of the IA 1971 by virtue of paragraph 2(4A) of Schedule 54 of the Immigration and Asylum Act 1999]*

In the first 8 days of detention (beginning with the day on which detention commences) a person may only apply for bail to an Immigration Officer not below the rank of CIO. Thereafter, applications for bail should be made to either, the Secretary of State or the Asylum Immigration Tribunal.

◆ **When detained pending an appeal to an immigration judge or to the Tribunal**

*[Paragraph 29 of Schedule 2 and paragraph 3 of Schedule 3 to the 1971 Act as amended by paragraphs 66 and 69 of Schedule 14 to the 1999 Act]*

In the first 8 days of detention (beginning with the day on which detention commences) a person may only apply for bail to an Immigration Officer not below the rank of CIO. Thereafter, applications for bail should be made to either, the Secretary of State or the Asylum Immigration Tribunal or a police officer of the rank of Inspector or above at any time while the appellant is detained in police custody (the police will normally refer such an application to the immigration office concerned).

Applications made to the Asylum and Immigration Tribunal, must be made either

- 1) before the tribunal hears the appeal, provided that notice of appeal has been duly given and has not subsequently been withdrawn; or
- 2) when the tribunal adjourns a hearing.

### **57.2 Secretary of State's bail**

Section 68 of the Nationality and Immigration & Asylum Act 2002 amends the 1971 Act. In all the above circumstances, where an application for bail is instituted after the expiry of a period of 8 days from the beginning of detention, then the power to release on bail lies with the Secretary of State. After 8 days the power is not exercisable by a CIO unless acting on behalf of the Secretary of State.

### **57.3 Advising a person of his bail rights**

When a person is eligible for bail, notify him and/or his representative that he has the right to apply for bail and give the bail information and application forms (IS98 and IS98A for CIO or SoS bail, B1 for immigration judges bail).

It is only necessary to notify a person once of his bail rights. You do not need to inform him every time his circumstances change.

A person may apply only in writing for bail. An application in writing shall contain the following:

- ◆ the full name and date of birth of the applicant;
- ◆ date of arrival in the United Kingdom

- ◆ the address where the applicant is detained at the time the application is made;
- ◆ whether an appeal is pending at the time of application;
- ◆ the address where the applicant would reside if his application for bail were to be granted; or, if he is unable to give such an address, the reason why an address is not given. If the applicant is unable to obtain a bail address but is entitled to NASS support, then the applicant does not have to state his proposed address as a NASS address will only be arranged after release from detention.
- ◆ the amount of the recognizance in which he would agree to be bound;
- ◆ the full names, addresses, occupations and dates of birth of any persons who have agreed to act as sureties for the applicant if his application for bail were to be granted and the amounts of the recognizance in which those persons will agree to be bound;
- ◆ the grounds on which the application is made and where a previous application has been refused, full particulars of any change in circumstances which have arisen since the refusal.
- ◆ whether (in the case of immigration judge's bail) an interpreter will be required at the hearing.

The application must be signed by the applicant or his representative.

[*The Immigration & Asylum Appeals (Procedure) Rules 2003*]

#### **57.4 Restrictions on the grant of bail**

The Tribunal's power to release a person on bail in accordance with paragraph 29 (3) of Schedule 2 of the Immigration and Asylum Act 1971 is subject to the provisions of paragraph 30(2) of Schedule 2 to the 1971 Act.

Under paragraph 30(2), an immigration judge or the Tribunal is not obliged release an appellant unless the appellant enters into a proper recognizance (or, in Scotland, bail bond), with sufficient

and satisfactory sureties if required, or where it appears to the immigration judge or the Tribunal that:

- ◆ the appellant has previously failed to comply with the conditions of any recognizance or bail bond;
- ◆ the appellant is likely to commit an offence if released;
- ◆ the release of the appellant is likely to cause danger to public health;
- ◆ the appellant is suffering from mental disorder and should be detained in his own interests or for the protection of any other person; or
- ◆ the appellant is under 17 and that no arrangements exist for his care, if released.

## **57.5 Consideration of a bail application**

When deciding whether or not to oppose bail, consider the following:

- ◆ the likelihood of the applicant failing to appear when required
- ◆ the period of time likely to elapse before any conclusive decision is made or outstanding appeal is disposed of;
- ◆ the diligence, speed and effectiveness of the steps taken by the Immigration Service to effect removal;
- ◆ any special reason for keeping the person detained (such as those in 57.3);
- ◆ the reliability and standing of sureties;
- ◆ in deportation cases, the views of the relevant senior case-worker in the relevant casework section.

### **57.5.1. Risk of absconding**

Indicators of a person likely to abscond include (most effective if supported by evidence):

- ◆ a previous escape or attempt to escape from custody;

- ◆ a previous breach of temporary admission or temporary release;
- ◆ a statement by him or his sponsor indicating an intention to go to ground;
- ◆ refusal by the person's sponsor to stand surety for him, because the sponsor is of a view the person is unlikely to comply, even if other sureties are produced;
- ◆ Terrorist connections or other considerations in which the public interest is involved.
- ◆ a previous failed attempt at removal due to the applicant being disruptive or failing to cooperate with the documentation process;
- ◆ an applicant who has failed to avail himself and regularise his stay until he has been apprehended and then makes a last minute application

If an individual is unlikely to abscond and there is no other reason to detain him, you should normally grant temporary release. Each case should be assessed on its individual merits but you should consider the person's family, social and economic background and his immigration history. Despite an adverse background/history, a CIO or the Secretary of State may grant bail where sufficient and satisfactory sureties are produced.

## **57.6 Recognisance and Sureties**

### **57.6.1 Fixing the amount of bail**

The amount of bail should be viewed in relation to the means of the applicant and his sureties, and should give a substantial incentive to appear at the time and place required. Each case should be assessed on its individual merits but a figure of between £2,000 and £5,000 per surety will normally be appropriate. Where there is a strong financial incentive to remain here, it is justifiable to fix bail (or suggesting to the immigration judge that it be fixed) at a larger sum. Property such as houses or businesses, or cars, may be offered but they are difficult to seize and should be rejected unless there are wholly exceptional circumstances in view of the potential hardship this could cause to others who have no part in the bail application.

Few applicants will have at their disposal in this country sufficient means to meet such a sum. It may therefore be necessary to accept from the applicant himself a recognizance (or, in Scotland, bail bond) in a nominal sum (e.g. £5). If the recognizance or (bail bond) taken from the applicant

exceeds the nominal sum because he has cash or assets here, this sum should be taken into account.

The applicant should be required to produce sureties who are willing to enter into recognizances for the payment of sums which satisfy the above criteria. The Procedure Rule 38 (2003) requires that any application for bail shall include the names, addresses, occupations and dates of birth of any persons who have agreed to act as sureties. Although sureties are not required under the Act, any decision to grant bail will normally be dependent upon the availability of nominated sureties.

### **57.6.2. Acceptable sureties**

To be effective as a surety, a person needs to be able to exert some control over the applicant, thereby ensuring he complies with the conditions of bail. Officers will need to consider the nature of the surety's relationship with the applicant as well as their geographical proximity. In order to be acceptable, a surety should:

- ◆ have enough money or disposable assets (clear of existing liabilities) to be able to pay the sum due if bail is forfeited;
- ◆ be aged 18 or over and settled in the United Kingdom. A person on temporary admission or with limited leave will rarely be acceptable as his own stay may be limited/curtailed;
- ◆ be a householder or at least well-established in the place where he lives;
- ◆ be free of any criminal record. The gravity with which a particular offence is viewed and the consequent effect upon the bail application will be a matter for the discretion of the CIO or Secretary of State. Officers are reminded of the need to ensure that a conviction is not spent by virtue of the 1974 Rehabilitation of Offenders Act (see IDIs Chapter 32 Section 2);
- ◆ not have come to adverse notice in other immigration matters, particularly previous bail cases or applications for temporary admission;
- ◆ Have a personal connection with the applicant, or be acting on behalf of a reputable organisation which has an interest in his welfare.

There must be some credible reason why a person should be prepared to act as a surety. Unsubstantiated claims to be a friend of the applicant should be treated with caution. Professional sureties suspected of acting for financial gain or with a view to aiding evasion should be rejected.

### **57.6.3 Investigating sureties**

The financial and general standing of all prospective sureties should be investigated as fully as possible. They will often be able to produce evidence of their financial position but take care over accepting bank books, statements of account etc at face value since it may be that sums of money have been temporarily deposited to deceive the authorities about the holder's means. A record of deposits over a period is a useful indication of financial status.

The LIO/collator of the local police force may be able to provide useful information about a surety or his address. All the usual checks available to the IS should be undertaken.

### **57.6.4 The taking of a recognizance**

In England and Wales, neither CIOs nor the Secretary of State may take the recognizance in cash; bail bonds are acceptable in Scotland.

The Border and Immigration Agency should no longer make the lodging of bail monies with representatives a condition of CIO or Secretary of State bail, nor should we ask the AIT, to make this a condition of bail.

Since the enactment of the Proceeds Crime Act, Crime Courts, Magistrates Courts and the AIT, have stopped the requirement to lodge funds, and representatives who are members of Law Society are not allowed to hold these funds under the Society's rules. The requirement also disadvantages applicants who are unrepresented.

### **57.7. CIO's or Secretary of State's bail – granting**

Bail is a very useful tool, enabling us to retain greater control than temporary release and freeing up detention space. Where officers believe a detainee is a potential candidate for bail, they should consider inviting an application, if appropriate stipulating the level of sureties which would be acceptable.

If a CIO or the Secretary of State grants bail, complete and sign two copies of the sureties recognizance (or bail bond) (IS99A), which should be signed by each of the sureties. An IS99 (applicant's recognizance or bail bond) should also be completed, explained to the applicant and then signed by the applicant. Once a copy of both these forms are signed and returned, an IS100 should be completed authorising release.

- ◆ Give one copy to the person who enters into the recognizance (or bail bond);
- ◆ place the original on the local file; and
- ◆ make and send an additional copy to the immigration judge or the Tribunal if the appellant is required to appear before them.

Under paragraphs 22 and 29 of Schedule 2 to the Act and section 9A of the 1993 Act (as inserted by the 1996 Act and amended by paragraphs 105 and 106 of Schedule 14 to the 1999 Act), CIOs or the Secretary of State may attach such conditions as are likely to result in the appearance of the person bailed at the required time and place. These conditions may include:

- ◆ reporting to an immigration reporting centre or an immigration office/police station, normally on a monthly basis;
- ◆ a requirement to live at a nominated address;
- ◆ where appropriate, surrender of the applicant's passport.

When granting bail it should be given to a set date, time and place. Bail should never be left open-ended.

### **57.7.1. Completing the bail summary pro-forma**

In illegal entry or administrative removal cases, any decision to oppose bail is one for the relevant operational unit. In deportation cases, the decision is for the relevant casework section.

Where an application is made direct to the IAA a presenting officer will represent us in court. The Presenting Officers Unit (POU) will forward a bail pro-forma to the office responsible for detention.

The bail summary must be completed fully and accurately detailing why we are opposing bail. Only facts pertaining to the person's detention should be referred to.

The bail summary must be returned to the POU in time for it to be filed with the IAA no later than 2.00pm on the day before the hearing. If the IAA has given the POU less than 24 hours notice of the hearing then the summary must be filed as soon as is practicable. The bail summary is fully disclosable and indeed a copy of the summary part is sent to the applicant's representatives the day before the hearing. In the event of the applicant not being represented at the bail hearing, the bail summary must be served on the applicant at their place of detention before 2.00pm. This task is carried out by the POU. In these circumstances the IOs at the detention centre should be notified 24 hours prior to the bail summary being served, so that they have sufficient time to schedule a visit with the applicant to advise them of procedures.

### **57.7.2. CIO's or Secretary of State's bail – refusing**

A CIO or the Secretary of State can refuse bail orally or by means of a brief, written explanation, similar to that used when temporary release is refused. The CIO or Secretary of State must be able to provide reasons for refusing bail. If a CIO or Secretary of State is not prepared to grant bail, he should advise the applicant that he may apply to the IAA.

A CIO or the Secretary of State could justifiably use the exceptions in paragraph 30 to Schedule 2 of the 1971 Act (which apply to immigration judges) as reasons for not granting bail:

- ◆ that the applicant has previously failed to comply with the conditions of any recognizance (or bail bond) entered into by him;;
- ◆ that the applicant is likely to commit an offence unless retained in detention;
- ◆ that the applicant's release is likely to cause a danger to public health;
- ◆ that the applicant is suffering from a mental disorder and that his continued detention is necessary in his own interests or for the protection of any other person.
- ◆ that the applicant is under the age of 17, and arrangements ought to be made for his care in the event of his release and that no satisfactory arrangements for that purpose have been made.

### **57.7.3. Repeat applications**

The applicant can make as many applications as he chooses. The CIO and Immigration judge must consider each one, even if there is no change in circumstances. Any repeat application must be considered fully, however it may be refused for exactly the same reasons as before (where there is no change in circumstances, subsequent repeat applications are likely to be refused). If the Secretary of State bail is refused, the applicant is entitled to apply for bail to the Tribunal. Alternatively, the applicant may decide to apply directly to the Tribunal rather than applying for the Secretary of State bail. Passage of time with little progress towards removal may however be considered sufficient change of circumstance identifying granting of bail.

### **57.8. Immigration judge's bail**

Immigration judges bail hearings cannot be adjourned. If the matter cannot be resolved it must be refused and re-listed. If an immigration judge decides that the appellant should be released on bail, the necessary forms will be provided and completed by the immigration judge's clerk who is responsible for notifying the detention centre if the applicant is not present in court. (The POU is responsible for notifying the port, the enforcement officer and the police). If the applicant cannot produce acceptable sureties on the spot, the immigration judge may decide to proceed under paragraphs 22(3) or 29(6) of Schedule 2 to the 1971 Act i.e. fix the amount of bail to be required and leave the recognizance's to be taken later by some other person such as an IO or police officer for the area in which the surety lives. A part-time immigration judge sitting without a clerk may need the assistance of the IS in transmitting this certificate to the person who is to take the recognizance.

Whilst an immigration judge's bail should always be to a specific time and place, lengthy periods of bail are sometimes set. If an offender becomes removable because of a dismissed appeal, but bail has not been lifted, the powers contained in paragraph 22(1A) of Schedule 2 to the 1971 Act (as amended by the 1996 Act) can be used to re-detain the person (see 39.6.5).

If a person is encountered who has broken the conditions attached to the grant of bail, arrest him and take him before an immigration judge within 24 hours. However, if a person has failed to appear at the required time and place at the end of his bail, he will be liable to detention

NB. Please note that bail is only breached when an applicant fails to comply with the primary conditions. A breach of secondary conditions (which is any other condition that will reasonably cause the person to comply with the primary condition) is not a breach of bail.

### **57.9. Police bail**

If an application made to the police is granted, ask them to complete their own forms and send two copies to the immigration office.

### **57.10. Notifying interested parties**

Once bail has been granted, notify all interested parties:

- ◆ Detention co-ordinator;
- ◆ The relevant casework section and MODCU if appropriate;
- ◆ the police station to which the applicant is to report. (Fax IS100A to the police station and notify them immediately of any changes to the reporting restrictions on IS100C);
- ◆ IAA via the clerk to the immigration judge or Tribunal where bail is granted under paragraph 29 of Schedule 2 to the 1971 Act. Send copies of IS99, IS99A and IS100 to the appropriate office with a letter of explanation (or fax if the hearing is within 5 days);
- ◆ POU where bail is granted under paragraph 29 of Schedule 2 to the 1971 Act. Provide all copies of the same documents as submitted to the IAA above.

### **57.11. Varying bail**

Bail can be varied under paragraph 22(1A) of the 1971 Act (as amended by the 1996 Act) whether granted by an Immigration judge, CIO, Police Inspector or the Secretary of State. However, we may not vary paragraph 29: bail granted by an Immigration judge where an appeal is extant.

The power to vary Immigration judge's bail is not unlimited and should not be used to overturn a decision because it is disagreed with. However, a change in circumstances, such as the setting of removal directions which were not in place at the time the grant of bail was made, may justify the variation of bail.

There is no power to vary secondary conditions alone. The power does however exist to vary the primary condition and if this is done, new secondary conditions may also be set.

If it is decided to vary bail, the sureties must be contacted as they need to sign again to accept the new conditions before they are put into effect. If this does not happen, the sureties will not be subject to forfeiture proceedings if the person absconds.

When police bail has been varied, notify all sureties and the bailed person using form IS100B and the police/reporting centre using form IS100C.

## **57.12. Re-detention of immigration offenders released on bail**

When a person is granted bail under the 1971 Act, either by an immigration judge or a CIO, bail is only satisfied when the person reports to an IO (with the exception of those subject to deportation action who have an appeal outstanding, when the requirement is to report to an immigration judge or the Tribunal). Where it is decided to re-detain a person who has been released on bail and is reporting regularly to the police, normally because that person has become removable, this can be done using powers contained in paragraph 22(1A) of Schedule 2 to the 1971 Act as amended by the 1996 Act:

"An immigration officer not below the rank of chief immigration officer or an immigration judge may release a person so detained on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before an immigration officer at a time and place named in the recognizance or bail bond or at such other time and place as may in the meantime be notified to him in writing by an immigration officer".

When the person next reports, notify him in writing that the conditions of his bail have been varied and he is required to report to an IO at that police station and on that date and re-detain him immediately. The following wording should be used:

"You were granted bail by an immigration judge [or CIO or Secretary of State] and under paragraph 22(1A) of Schedule 2 to the Immigration Act 1971 as amended by the 1996 Asylum and Immigration Act the conditions of your bail are hereby varied and you are required to report to an immigration officer at...on..."

NB It is not possible to ask a police officer to detain a person in these circumstances under paragraph 22 since bail is not ended until the person has reported to an IO.

Where the police station is some distance from the detaining port or local enforcement office, staff should contact the nearest port/LEO and ask that an IO attend the police station as required. As IS reporting centres are set up throughout the country, the need to require bailees to report to the police should become increasingly infrequent.

Police officers *can* arrest a bailee (as can IOs\*) under para 24(1) of Schedule 2 to the 1971 Act if the person has breached conditions of his bail or if there are reasonable grounds for believing he is likely to do so (see 57.13.1).

\*but see 31.1

### **57.13. Surrendering to bail**

Upon surrendering to bail by appearing before an IO at a required time and place, the person returns to IS custody. When a person surrenders to bail granted by an immigration judge or by the Tribunal by appearing, as required, before them, provided that they still have the jurisdiction to do so, the immigration judge or the Tribunal will normally consider extending bail. Where the court's jurisdiction ends, or where bail is refused, the person may be returned to IS custody.

#### **57.13.1. Appellant fails to surrender to bail**

On any occasion on which an appellant released on bail is due to appear before an immigration judge, the presenting officer should bring copies of the relevant recognizance's (or, in Scotland, bail bonds) so that if the applicant fails to appear, these copies can be produced to an immigration judge who can then be invited to exercise his power under paragraph 23 (applies to paragraph 22 bail) or 31 (applies to paragraph 29 bail) of Schedule 2 to the 1971 Act to declare the recognizance's (or bail bonds) forfeited. WICU and the police in the area where the person is thought to have gone to ground should be notified.

A claim that a person on bail has embarked should never be accepted as a reason for his not appearing at the time and place required unless there is firm evidence to show he has left the country. The IAA should be informed but in the absence of firm evidence indicating embarkation the presenting officer should make the point that the appellant has failed to surrender to his bail and ask that recognizance's (or bail bonds) be forfeited.

In cases where a CIO or Secretary of State has granted bail and the applicant has broken bail, to obtain forfeiture of the recognizance's (or bail bonds), the CIO or Secretary of State must advise the IAA that the applicant has failed to report; the immigration judge then issues an order to present to a magistrate (or, in Scotland, a sheriff) for enforcement under paragraphs 23(1) and 31(1) of Schedule 2 to the 1971 Act.

Where a person fails to answer bail i.e. failing to report to the Immigration judge or CIO at the time and place specified at the end of the bail (not failing to report to IS/police or comply with conditions), write to the Tribunal requesting a forfeiture hearing. Outline the circumstances and include copies of the forms signed by sureties and applicant. The immigration judge will decide if a hearing is appropriate and will then summon the sureties and assess whether any or all of the money should be forfeited.

Consideration will be given to:

- ◆ their level of responsibility for the bailee's failure to comply and the steps taken to ensure compliance;
- ◆ any steps taken by them to report concerns to the IS;
- ◆ if the bailee had failed to comply with other conditions, what steps had been taken to ensure compliance;
- ◆ any other excuses/explanations.

If the sureties failed to appear for the hearing they would lose their money in its entirety.

The immigration judge would make a forfeiture order and remit to the local Magistrates Court for them to arrange collection with any other fines.

#### **57.14. Powers to arrest a person who is likely to break bail or has done so**

Persons who have absconded from bail granted by the Tribunal, a CIO, or the Secretary of State (i.e. those who have actually absconded from bail by failing to report at the end of the bail) are no longer subject to a grant of bail and will be liable to detention and arrest under paragraph 17 of Schedule 2 to the 1971 Act.

A person who an IO has reasonable grounds to suspect is likely to break or has broken any condition of bail (i.e. has failed to report or has not yet failed to report, but it is suspected that he will), or whom there are reasonable grounds to suspect is likely to fail to appear at the time and place required, i.e. at the end of his bail, is also liable to be arrested under paragraphs 24(1)(a) or 33(1)(a) of Schedule 2 to the 1971 Act.

Such persons must be brought before an immigration judge within 24 hours, or, if that is not possible, before a JP acting for the petty sessions area in which he was arrested or, in Scotland, the sheriff.\* The immigration judge or JP must then decide whether to sanction re-detention or order release on the original or a new bail.

\*unless a condition of his bail is to appear before an IO within 24 hours of his arrest, in which case he should be brought before that officer, paragraph.24(2)(b) of Schedule 2 refers.