



CONSTITUTIONAL INSTRUMENT

NO.5 OF 2018

Supplement to the Sierra Leone Gazette Vol. CXLIX, No.63
dated 12th July, 2018

THE BAIL REGULATIONS, 2018

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Constitutional Instrument No. 5 of 2018

Published **12th July 2018**

THE CONSTITUTION OF SIERRA LEONE, 1991 *(Act No.6 of 1991)*

Short title.

BAIL REGULATIONS, 2018

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

PART – I PRELIMINARY

Interpretation. 1. In these Regulations unless the context otherwise requires –

“Act” means the Criminal Procedure Act, 1965;

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

“bail report“ means a document used by the Court to assess-
 (a) the likelihood of the defendant appearing for trial; and

(b) bail conditions to be imposed;

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

“Court” includes a judge of the Superior Court of

Judicature or a Magistrate or Justice of the Peace, vested

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

“defendant” means a person charged with an offence;

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

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

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

PART II- COURT BAIL

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

(2) An application for bail shall be dealt with by the Court, or the issue of bail shall be considered on each

occasion a defendant appears before a Court in relation to the relevant offence charged.

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

- (a) the law;
- (b) the charges;
- (c) the strength of the evidence;
- (d) the protection of victims, witnesses and the general public;
- (e) the personal circumstances of the defendant if granted bail;
- (f) the likelihood of the commission of offences if defendant is granted bail;
- (g) the likelihood of the defendant's failure to attend Court; and
- (h) any other relevant factor.

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

General bail

4. The general conditions for assessing bail are conditions.

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

Circumstances

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

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

(v) likely endanger national security.

(b) the defendant is in custody in pursuance of the sentence of a Court;

(c) the Court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this regulation for want of time since the institution of the proceedings against the defendant, provided the defendant shall not be kept in custody for more than 24 hours;

(d) the defendant is charged with an offence alleged to have been committed while s/he was released on bail;

(e) the defendant's case is adjourned for inquiries or a report and it appears to the Court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody, provided the defendant shall not be kept in custody for more than 24 hours;

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

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

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

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

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

General

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

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

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

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

- (a) surrender his/her travel documents to the Court;
- (b) inform the Court if s/he intends to leave Sierra Leone; or
- (c) comply with other requirements that the Court deems necessary to ensure that the defendant -
 - (i) surrenders to Court;
 - (ii) does not commit an offence while on bail;

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

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

(4) Where a parent or guardian of a child consents to be a surety for the child for the purposes of this Regulation, the parent or guardian may be required to ensure that the child complies with any condition imposed on him/her in sub-regulation (2) but no condition shall be imposed on the parent or guardian where it appears that the child will be over the age of eighteen years at the time appointed for him/her to attend Court.

Special needs

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

- (a) is a child;
- (b) is severely sick or ill;
- (c) has physical disabilities;
- (d) has mental disabilities;

- (e) is pregnant;
- (f) is a lactating mother; or
- (g) is a primary caregiver.

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

Bail records.

8. (1) Where a court -

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

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

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

Absence of

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

Bail with

surety where a surety.

subsection (6) of section 81 of the Act-

10. (1) In considering the suitability of a proposed defendant is admitted to bail under

(a) regard shall be had to such factors as the Court thinks fit, including -

(i) the surety's profession, occupation, trade or business;

(ii) their character and previous convictions if any;

(iii) relationship to the defendant; and

(iv) any other relevant factor.

(b) the surety shall be required to make a declaration in the prescribed form.

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

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

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

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

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

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

Forfeiture 14. Where a surety has provided a security for the purpose of security. ensuring that a defendant appears in court and the defendant fails to

appear, the court shall apply the provisions as stipulated under section 129 of the Act.

Release of Surety

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

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

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

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

MADE this day of, 2017

Abdulai Hamid Charm

Chairman



Chief Justice

Nicolas C. Browne-Marke
Justice of the Supreme Court

Member



Reginald Fynn
Justice of the Appeals Court

Member



Miatta Samba
Justice of the High Court

Member



Sulaiman A Bah
Director of Public Prosecutions

Member



Dandyson Durosime Thompson
First Parliamentary Counsel

Member



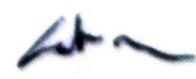
Gerard J. Soyei
Nominee of the Attorney-General
and Minister of Justice

Member



Centus Macauley
Legal Practitioner

Member



Ransford Johnson
Legal Practitioner

Member



Explanatory Memorandum

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

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

HON. DR ABASS CHERNOR BUNDU

Speaker

Freetown,

Sierra Leone.



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