

General Scheme of Bail Bill

Regulatory Impact Analysis

1. Summary RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Justice and Equality	Title of Legislation: General Scheme of Bail Bill
Stage: General Scheme	Date: July 2015
Related Publications: None	
Available to view or download at: http://www.justice.ie (when published)	
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What policy objectives have been pursued? Making the law on bail as effective as possible to ensure public safety and confidence in the operation of the bail laws, without any diminution of the fundamental rights of accused persons. What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified. A. Do nothing. B. Introduce legislation to consolidate existing bail law. C. Introduce legislation to amend the Bail Act 1997 to improve the law on bail. D. Introduce legislation both to consolidate existing bail law and improve the law on bail. Preferred Option: Introduce legislation both to consolidate existing bail law and improve the law on bail.	

OPTIONS			
	COSTS	BENEFITS	IMPACTS
A.	<ul style="list-style-type: none"> Bail law not made more accessible and transparent; improvements to bail law not made. 	<ul style="list-style-type: none"> None. 	<ul style="list-style-type: none"> Continuing public concern regarding the operation of bail laws.
B.	<ul style="list-style-type: none"> Opportunity for improvements to bail law not taken. 	<ul style="list-style-type: none"> Bail law made more accessible and transparent. 	<ul style="list-style-type: none"> Continuing public concern regarding the operation of bail laws.
C.	<ul style="list-style-type: none"> Bail law not made more accessible and transparent. 	<ul style="list-style-type: none"> More effective bail law focused on public safety. 	<ul style="list-style-type: none"> Greater public understanding of bail issues; public concern lessened by focus on public safety issues.
D.	<ul style="list-style-type: none"> More time and resources required to draft the Bill. 	<ul style="list-style-type: none"> More accessible and transparent bail law; more effective bail law focused on public safety. 	<ul style="list-style-type: none"> Greater public access to and understanding of bail law and bail issues; public concern lessened by focus on public safety issues.

2. Policy Context and Objectives

A decision to grant bail in a particular case is a matter for the court, which is, subject only to the Constitution and the law, independent in the exercise of its judicial functions. There is a constitutional presumption in favour of bail because, in the eyes of the law, a person is innocent until proven guilty. The provisions of the European Convention on Human Rights also restrict the extent to which the right to bail can be limited.

The main statutory provisions relating to bail are Part III (Remand) of the Criminal Procedure Act 1967 and the Bail Act 1997. Section 2 of the Bail Act 1997 gave effect to the Sixteenth Amendment of the Constitution, which allows bail to be refused to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person. A “serious offence” is an offence listed in the Schedule to the Bail Act that is punishable by at least five years imprisonment.

Section 2 of the Bail Act 1997 sets out matters that a court is required to take into account in deciding whether to refuse bail under that section. These are the nature and degree of seriousness of the offence charged, the nature and seriousness of the offence apprehended, the likely sentence (if convicted), the nature and strength of the evidence, any convictions for offences while on bail previously, any previous convictions, and whether the accused person is charged with and awaiting trial for other offences.

Case-law, in particular, the landmark judgment of the Supreme Court in *The People (Attorney General) v. O’Callaghan*, is the source of law for grounds for refusal of bail other than those provided for in the Bail Act 1997. Such grounds for refusal of bail are that a person may evade justice by absconding before trial or interfering with witnesses or evidence. In addition, much of the law relating to bail in the higher courts derives from the inherent jurisdiction of those courts and is not contained in statute.

The Bail Act 1997 has been amended on a number of occasions, in particular, by the Criminal Justice Act 2007. Other provisions relating to bail, such as procedural provisions, are scattered across a significant number of Acts.

The Minister is of the view that bail law should be kept under continuing review to ensure that all possible avenues are taken to protect the public against the commission of crime, particularly serious crime, by persons on bail. Accordingly, the Department of Justice and Equality, in consultation with the Office of the Director of Public Prosecutions, the Garda Síochána and the Courts Service, has reviewed bail legislation with a view to presenting options for additional measures to further strengthen the operation of the bail laws.

The following issues were taken into account in the review of bail legislation:

- In addition to constitutional protections, the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights provide strong protection for the right to liberty and limit the extent to which pre-trial detention can be provided for in legislation.
- While the courts apply the Bail Act 1997 and subsequent bail provisions and refuse to grant bail where they consider that there is a risk of serious offences being committed while on bail, offences continue to be committed by persons granted bail and

improvements to the legislation may be necessary to ensure the protection of the public against such offending.

- As the law on bail is contained in various enactments and case-law, consolidation of bail law in one Act, as far as this is possible, would be beneficial.

3. Identification and Description of Options

The following options were considered:

A. Do nothing.

B. Introduce legislation to consolidate existing bail law.

C. Introduce legislation to amend the Bail Act 1997 to improve the law on bail.

D. Introduce legislation both to consolidate existing bail law and improve the law on bail.

Having considered the options examined in the review, the Minister considers that in addition to the need to consolidate the law on bail, there is also a need to consider the inclusion of provisions to make the law more effective in protecting the public against the commission of offences by persons on bail.

4. Analysis of Costs, Benefits and Impacts for ALL Options

A. Do nothing

To do nothing would be to ignore the public interest in and concern about this area of the law. The Minister is of the view that the law on bail should be as effective as possible to ensure public safety and confidence. Accordingly, it is proposed to proceed with improvements to legislation in this area.

There is no alternative mode of regulation as consolidation and reform of criminal law can only be effected through primary legislation.

B. Introduce legislation to consolidate existing bail law

A consolidated text could, for the first time, give statutory effect to common law rules on bail as well as bringing together provisions on bail currently contained in various criminal law enactments. Such consolidated legislation could, in addition, reduce the time spent and costs incurred by all involved in the legal process in accessing bail law.

The drafting of consolidated bail legislation will take more time than would be required to only draft amendments to existing legislation. The Minister is, however, satisfied that a consolidated text of bail law would be beneficial in providing accessibility and clarity in this area of the law.

However, limiting the text to consolidation only would miss the opportunity to give effect to some identified improvements which could be made to the law. For that reason, the Minister does not favour such a limited approach.

C. Introduce legislation to amend the Bail Act 1997 to improve the law on bail

In reviewing the operation of the law on bail, the Department identified a number of improvements which could be made to the law within the existing legal constraints and which would:

- make the law more effective in protecting the public against the commission of offences by persons on bail;
- provide for a number of amendments which are identified as necessary to improve the operation of bail law.

It is unlikely that these proposed changes to the bail laws will result in significantly more accused persons being remanded in custody. It is intended that the new provisions will bring a new focus on public safety in order to achieve a balance between the right of an accused person to liberty and the safety of the community. It is hoped that this focus will assist the courts in their consideration of bail applications in serious cases. It is not possible to quantify the likely effect. Nor is it possible to predict the saving in terms of cost to the community in relation to the effect on the number of persons who commit serious offences on bail.

The primary purpose of the proposed legislation is to protect individuals and the community from crime. However, this must be done in a way which also protects the fundamental rights of the accused person under the Constitution and the European Convention on Human Rights. The impact of the proposed legislation should be to enhance the protection of individuals and community safety without any diminution of the fundamental rights of accused persons.

These amendments could be made to existing law without the need to consolidate bail law generally. However, the Minister has not chosen to provide for this option only as to do so would mean that the question of consolidation of bail law, which would bring with it the benefits mentioned in relation to Option B above, would not be addressed.

D. Introduce legislation both to consolidate existing bail law and to improve the law on bail.

The Minister has decided that the most appropriate approach is to implement Options B and C in one Bill to provide for both the consolidation of bail law and the improvements discussed above in relation to Option C. The Minister considers that it would be a better use of Oireachtas time to provide for both options in one Bill. It is intended that the legislation will:

- consolidate bail law into one clear and accessible instrument;
- make the law more effective in protecting the public against the commission of offences by persons on bail;
- provide for a number of amendments which are identified as necessary to improve the operation of the law on bail.

5. Consultation

The General Scheme has been drawn up in consultation with the Office of the Attorney General, the Office of the Director of Public Prosecutions, An Garda Síochána, the Victims of Crime Office and the Courts Service. However, further consultation, particularly with the Office of the Attorney General, will be required during drafting.

6. Enforcement and compliance

The provisions of the General Scheme concern the criminal law. Enforcement will therefore be a matter for the Garda Síochána, the Director of Public Prosecutions and the courts.

7. Review

The new provisions will be kept under ongoing review as to their practicality, workability and effectiveness as a matter of course.

8. Publication

The Regulatory Impact Analysis will be published on the website of the Department of Justice and Equality when the Bill is published.

July 2015