

A BILL

entitled

BAIL AMENDMENT ACT 2010

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WHEREAS it is expedient to amend the Bail Act 2005;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Bail Act 2005 (the "principal Act"), may be cited as the Bail Amendment Act 2010.

Inserts section 5A

2 The principal Act is amended by inserting the following next after section 5—

"Police bail

5A (1) Where a police officer of or above the rank of inspector grants bail under section 462 of the Criminal Code Act 1907, before or after charge, in respect of a person who has been taken into custody for an indictable offence, that officer may impose conditions of bail, in accordance with this section.

(2) Section 4 applies in relation to bail granted by a police officer of or above the rank of inspector under section 462 of the Criminal Code Act 1907, subject to the following modifications—

- (a) in subsection (4), the reference to "the court" shall be construed as a reference to "a police officer of or above the rank of inspector", and paragraph (d) does not apply;

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- (b) subsection (5) does not apply; and
- (c) the following is substituted for subsection (7)—

“(7) Where a police officer of or above the rank of inspector has imposed conditions of bail under subsection (1), a police officer of or above the rank of inspector may, at the request of the person who was granted bail, vary the conditions of bail; and in doing so he may impose other or more onerous conditions.”.

(3) Where a police officer of or above the rank of inspector grants bail to a person, no conditions shall be imposed under subsection (3), (4) or (6) of section 4 (as applied by subsection (2) of this section) unless it appears to the police officer that it is necessary to do so for the purpose of preventing that person from—

- (a) failing to surrender to custody;
- (b) committing an offence while on bail; or
- (c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person.

(4) For greater certainty, conditions referred to in subsection (3) include, but are not limited to—

- (a) a requirement to report to a police station;
- (b) the imposition of a curfew;
- (c) a requirement to reside at a specified address;
- (d) a requirement not to contact (directly or indirectly), or communicate or associate with, certain persons;
- (e) a requirement not to enter certain areas, buildings or places, including licensed premises;
- (f) a requirement not to drive vehicles;
- (g) surrender of passport or other travel documents; and
- (h) a requirement that a person wear an electronic monitoring device to enable police to monitor the movements of the person, in the case of—
 - (i) an offence under the Firearms Act 1973, or
 - (ii) a serious arrestable offence, within the meaning of section 3 of the Police and Criminal Evidence Act 2006, involving the use of a firearm or ammunition, within the meaning of section 1 of the Firearms Act 1973.

(5) Subsections (3) and (4) of this section also apply with regard to any request under section 4(7) (as substituted by subsection (2)(c) of this section) to vary conditions of bail. ”.

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Amends Schedule 1

3 Part I of Schedule 1 is amended by deleting paragraph 2 and substituting the following—

- “2 The defendant need not be granted bail if the offence is—
- (a) murder;
 - (b) an offence under the Firearms Act 1973; or
 - (c) a serious arrestable offence, within the meaning of section 3 of the Police and Criminal Evidence Act 2006, involving the use of a firearm or ammunition, within the meaning of section 1 of the Firearms Act 1973.”.

Repeal

4 Section 5A of the principal Act, as enacted by section 2 of this Act, is repealed on the coming into operation of section 5 of the principal Act.

Transitional provisions

5 (1) Section 5A of the principal Act does not apply in respect of bail that has been granted by a police officer under section 462 of the Criminal Code Act 1907 before the coming into operation of this Act.

(2) Notwithstanding section 3 of this Act, section 5A of the principal Act continues to apply in respect of bail that has been granted by a police officer under section 462 of the Criminal Code Act 1907 before the repeal of section 5A of the principal Act by section 3 of this Act.

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EXPLANATORY MEMORANDUM

This Bill would enact a new section 5A of the Bail Act 2005 (the “principal Act”). This section would be an interim measure pending the coming into force of section 5 of the principal Act, which is linked to amendments to the Police and Criminal Evidence Act 2006 (PACE) that are due to come into operation next year.

Clause 1 is the citation provision of the Bill.

Clause 2 inserts a new section 5A in the principal Act, being an adaptation of the existing (but not yet in force) section 5.

Subsection (1) authorizes a police officer of or above the rank of inspector to impose conditions on bail where bail is granted under section 462 of the Criminal Code Act 1907 for an indictable offence. Note that section 462 will be repealed when the PACE amendments come into operation.

Subsection (2) adapts provisions of section 5 of the principal Act (which are linked to the PACE amendments) to present circumstances.

Subsection (3) sets out the circumstances in which bail conditions may be imposed.

Subsection (4) sets out a list of the type of conditions that may be imposed. The list is not exhaustive.

Subsection (5) provides that the circumstances and conditions for bail apply to a request to vary bail conditions.

Clause 3 adds an exception to the right to bail for offences under the Firearms Act 1973 or serious arrestable offences (as defined in PACE) involving the use of firearms or ammunition.

Clause 4 provides for the repeal of section 5A on the coming into operation of section 5.

Clause 5 sets out transitional provisions with regard to the coming into operation of section 5A and with regard to its repeal. The new section 5A will not apply in the case of bail granted before it comes into operation. And, upon repeal of section 5A, section 5A will continue to apply in the case of bail granted before its repeal.